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The Honorable James L. Robart

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
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88-CV-00379-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS) Case No. 88-379R
PROJECT, ET AL.)
PLAINTIFFS,) ~~PROPOSED~~ ORDER OF
vs.) PRELIMINARY APPROVAL OF
U.S. CITIZENSHIP AND IMMIGRATION) CLASS ACTION SETTLEMENT
SERVICES, ET AL.) (Exhibit 4)
DEFENDANTS.)
_____))
))

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1 Plaintiffs in the above captioned matter, on behalf of themselves, the Class and all
2 Class Members, and Defendants, by and through their undersigned counsel, have
3 entered into a Settlement agreement, as of August 2, 2007, subject to the approval of the
4 Court. The parties have sought provisional certification of the settlement class and
5 preliminary approval of the settlement.

6 It Is Hereby Ordered that the Settlement is preliminarily approved subject to notice
7 to the class and final approval by the Court.

8 The settlement class is provisionally approved pursuant to Rule 23 of the Federal
9 Rules of Civil Procedure as follows:

10 All persons who entered the United States in a non-immigrant status prior to
11 January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A
12 of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated
13 Categories described below in paragraph 2, and who —

- 14 A) between May 5, 1987 and May 4, 1988, attempted to file a complete
15 application for legalization under § 245A of the INA and fees to an INS
16 officer or agent acting on behalf of the INS, including a Qualified Designated
17 Agency ("QDE"), and whose applications were rejected for filing
18 (hereinafter referred to as "Sub-class A members"); or
19 B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization
20 with an INS officer, or agent acting on behalf of the INS, including a QDE,
21 under § 245A of the INA, but were advised that they were ineligible for
22 legalization, or were refused legalization application forms, and for whom
23 such information, or inability to obtain the required application forms, was a
24 substantial cause of their failure to file or complete a timely written
25 application (hereinafter referred to as "Sub-class B" members); or
26 C) filed a legalization application under INA § 245A and fees with an INS
27 officer or agent acting on behalf of the INS, including a QDE, and whose
28 application

Settlement

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1 has not been finally adjudicated or whose temporary resident status
2 has been proposed for termination (hereinafter referred to as "Sub-
3 class C.i. members"),

4 iii. was denied or whose temporary resident status was terminated,
5 where the INS or CIS action or inaction was because INS or CIS
6 believed the applicant had failed to meet the "known to the
7 government" requirement, or the requirement that s/he demonstrate
8 that his/her unlawful residence was continuous (hereinafter referred
9 to as "Sub-class C.ii. members").

10 **2. Enumerated Categories**

- 11 (1) Persons who violated the terms of their nonimmigrant status prior to
12 January 1, 1982 in a manner known to the government because
13 documentation or the absence thereof (including, but not limited to, the
14 absence of quarterly or annual address reports required on or before
15 December 31, 1981) existed in the records of one or more government
16 agencies which, taken as a whole, warrants a finding that the applicant was
17 in an unlawful status prior to January 1, 1982 in a manner known to the
18 government.
- 19 (2) Persons who violated the terms of their nonimmigrant visas before January
20 1, 1982, for whom INS/DHS records for the relevant period (including
21 required school and employer reports of status violations) are not contained
22 in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R.
23 §§ 245a.1(d) and 245a.2(d) without such records.
- 24 (3) Persons whose facially valid "lawful status" on or after January 1, 1982 was
25 obtained by fraud or mistake, whether such "lawful status" was the result of
26 (a) reinstatement to nonimmigrant status;
27 (b) change of nonimmigrant status pursuant to INA § 248;
28 (c) adjustment of status pursuant to INA § 245; or

Settlement

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(d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

In satisfaction of Rule 23(e)(1) of the Federal Rules of Civil Procedure, the parties shall provide notice to the class as follows: (1) Defendants shall post the Settlement agreement and the Exhibits attached to the Settlement agreement in appropriate places on the USCIS website. uscis.gov (2) Plaintiffs shall post the Settlement agreement and the Exhibits attached to the Settlement agreement in appropriate places on plaintiffs' counsels' websites www.centerforhumanrights.org and www.ghp-law.net (3) Defendants shall distribute the Settlement agreement and the Exhibits attached to the Settlement agreement to all immigration assistance providers listed, as of the Effective Date of this Settlement, on the Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review pursuant to 8 C.F.R. 292 and 1292, and the Pro Bono Program section of the EOIR website.

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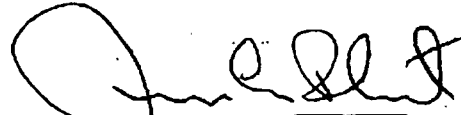
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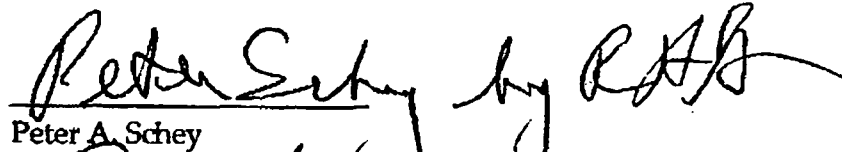
Objections or comments to the Settlement agreement shall be filed with the Court no later than July 15, 2008. Within thirty days thereafter the parties may respond to any objections and the Court shall proceed to consider final approval.

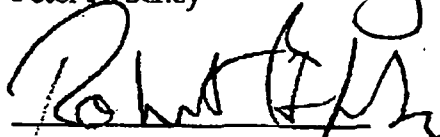
IT IS SO ORDERED


Dated: June 2, 2008


Honorable James L. Robart
United States District Judge

Presented by:


Peter A. Schey


Robert Gibbs
Attorneys for Plaintiffs


Anthony Norwood
U.S. Department of Justice
Office of Immigration Litigation

Attorneys for Defendants

Settlement

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS)	Case No. 88-379R
PROJECT, ET AL.)	
PLAINTIFFS,)	STIPULATION OF SETTLEMENT
vs.)	
U.S. CITIZENSHIP AND IMMIGRATION)	
SERVICES, ET AL.)	
DEFENDANTS.)	

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1 Plaintiffs in the above captioned matter, on behalf of themselves, the Class and all
2 Class Members (as defined below), and Defendants Michael B. Mukasey, the Attorney
3 General of the United States, the United States Department of State, the Department of
4 Homeland Security, by and through their undersigned counsel, hereby enter into this
5 Stipulation and Agreement of Settlement, subject to the approval of the Court pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure.

7 WHEREAS:

8 1. Wherever used in this Stipulation, the following terms have the meanings set forth
9 below:

10 a. "Action" means the above-captioned action pending in the United States
11 District Court for the Western District of Washington (docket No. 88-379R).

12 b. "Class member" means any Person included in the Class.

13 c. "Effective Date of Settlement" or "Effective Date" means the date upon
14 which the Settlement contemplated by this Stipulation shall become effective, as set forth
15 in paragraph 20 below.

16 d. "Plaintiff" or "Named Plaintiff" means the plaintiffs identified in the
17 amended complaint filed February 6, 2004, in this Action and "Defendant" or
18 "Defendants" means the defendants identified in the same complaint.

19 e. "Plaintiffs' Counsel" or "Class Counsel" means Peter Schey and Carlos
20 Holguin, Center for Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los
21 Angeles, CA 90057, and Robert Gibbs and Robert Pauw, Gibbs, Houston Pauw, 1000
22 Second Ave, Suite 1600. Seattle, WA 98104.

23 f. "Released Parties" means any and all of the Defendants, their predecessors
24 and successors, their departments or agencies, and their past or present agents,
25 employees, and contractors.

26 g. "Settled Claims" means any and all actions, suits, claims, demands, rights,
27 liabilities, and causes of action, of every nature and description, whether known or
28 unknown, accrued or unaccrued, whether based on federal, state, local, statutory or

1 common law or any other law, rule or regulation, that were asserted or that could have
2 been asserted or could be asserted in any forum, that the Plaintiffs, the Class, the Class
3 Members or any of them, or any of their heirs, representatives, attorneys, successors,
4 assigns, and any person they represent, in the past had, now have, or might in the future
5 have against the Defendants or any of them, which regard, concern, relate to, refer to,
6 arise out of, or are based upon, in any way: (a) the allegations, transactions, facts, matters,
7 occurrences, representations, omissions, disclosures, statements, failure to disclose or
8 action involved, set forth, referred to or that were, could be, or could have been asserted
9 in the Action, whether known or unknown, including without limitation Unknown
10 Claims as herein defined, and whether or not concealed or hidden; or (b) the Defendants'
11 defense of or settlement of the Action. Provided, however, that the definition of Settled
12 Claims shall not in any way impair or restrict the rights of the settling parties to enforce
13 the settlement via the dispute resolution provisions of this Stipulation at paragraphs 7 and
14 16. As used herein, "Unknown Claims" shall mean any and all actions, suits, claims,
15 demands, rights, liabilities, and causes of action that the Plaintiffs, the Class, or any of the
16 Class Members do not know of or suspect to exist in their favor at the time of the release
17 of the Released Parties, including but not limited to those that, if known by them, might
18 have affected their agreement to the Settlement. Any plaintiff or class member whose
19 application for legalization pursuant to Immigration and Nationality Act ("INA") section
20 245A is timely made under this settlement stipulation and is denied, may seek judicial
21 review of such denial only under INA section 245A(f)(4)(A) in the appropriate court of
22 appeals, upon review of a final order of removal (including a final order of deportation or
23 exclusion).

24 h. "Settlement" means the settlement contemplated by this Stipulation.

25 2. Defendants deny all liability with respect to the Action, deny that they have
26 engaged in any wrongdoing, deny the allegations in the Complaint filed in the Action,
27 deny that they committed any violation of law, deny that they acted improperly in any
28 way, and deny liability of any kind to the plaintiffs, the Class, or the Class Members, but

1 have agreed to the settlement and dismissal of the Action with prejudice in order to: (i)
2 avoid the substantial expense, inconvenience, and distraction of continued protracted
3 litigation; and (ii) finally put to rest and terminate the Action and any and all Settled
4 Claims.

5 3. Class Counsel has conducted discussions and arms' length negotiations with
6 Defendants' Counsel with respect to a compromise and settlement of the Action with a
7 view to settling the issues in dispute and achieving the best relief possible consistent with
8 the interests of the Plaintiffs, the Class, and all Class Members.

9 4. Class Counsel have concluded that the terms and conditions of this Stipulation are
10 fair, reasonable, and in the best interests of the Plaintiffs, the Class, and all Class
11 Members; have agreed that the Released Parties should be released from the Settled
12 Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the
13 dismissal of the Action with prejudice, after considering the substantial benefits that the
14 Plaintiffs, the Class, and all Class Members will receive from settlement of the Action, the
15 risks of litigation, and the desirability of permitting the Settlement to be consummated as
16 provided by the terms of this Stipulation.

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

23 **Release; Scope and Effect of Release**

24 The obligations incurred pursuant to this Stipulation shall be in full and final
25 disposition of the Action with prejudice and of any and all Settled Claims as against all
26 Released Parties.

27 On the Effective Date, the Plaintiffs, the Class, and the Class Members, on behalf of
28 themselves, their heirs, executors, administrators, representatives, attorneys, successors,

1 assigns, agents, affiliates and partners, and any Persons they represent ("Releasing
2 Parties"), shall be deemed to have, and by operation of the Final Judgment shall have
3 fully, finally, and forever released, relinquished, and discharged the Released Parties of
4 and from any and all of the Settled Claims, and the Releasing Parties shall be forever
5 barred and enjoined from bringing or prosecuting any Settled Claims against any of the
6 Released Parties. The terms of this paragraph do not limit the operation of paragraphs 7
7 and 16.

8 **1. Class Definition**

9 Members of the following class pursuant to Rule 23 of the Federal Rules of Civil
10 Procedure are entitled to relief pursuant to this Settlement Agreement:

11 All persons who entered the United States in a non-immigrant status prior to
12 January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A
13 of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated
14 Categories described below in paragraph 2, and who —

- 15 A) between May 5, 1987 and May 4, 1988, attempted to file a complete
16 application for legalization under § 245A of the INA and fees to an INS
17 officer or agent acting on behalf of the INS, including a Qualified Designated
18 Agency ("QDE"), and whose applications were rejected for filing
19 (hereinafter referred to as "Sub-class A members"); or
20 B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization
21 with an INS officer, or agent acting on behalf of the INS, including a QDE,
22 under § 245A of the INA, but were advised that they were ineligible for
23 legalization, or were refused legalization application forms, and for whom
24 such information, or inability to obtain the required application forms, was a
25 substantial cause of their failure to file or complete a timely written
26 application (hereinafter referred to as "Sub-class B" members); or
27
28

- 1 C) filed a legalization application under INA § 245A and fees with an INS
2 officer or agent acting on behalf of the INS, including a QDE, and whose
3 application
4 i. has not been finally adjudicated or whose temporary resident status
5 has been proposed for termination (hereinafter referred to as “Sub-
6 class C.i. members”),
7 ii. was denied or whose temporary resident status was terminated,
8 where the INS or CIS action or inaction was because INS or CIS
9 believed the applicant had failed to meet the “known to the
10 government” requirement, or the requirement that s/he demonstrate
11 that his/her unlawful residence was continuous (hereinafter referred
12 to as “Sub-class C.ii. members”).

13 **2. Enumerated Categories**

- 14 (1) Persons who violated the terms of their nonimmigrant status prior to
15 January 1, 1982 in a manner known to the government because
16 documentation or the absence thereof (including, but not limited to, the
17 absence of quarterly or annual address reports required on or before
18 December 31, 1981) existed in the records of one or more government
19 agencies which, taken as a whole, warrants a finding that the applicant was
20 in an unlawful status prior to January 1, 1982, in a manner known to the
21 government.
22 (2) Persons who violated the terms of their nonimmigrant visas before January
23 1, 1982, for whom INS/DHS records for the relevant period (including
24 required school and employer reports of status violations) are not contained
25 in the alien’s A-file, and who are unable to meet the requirements of 8 C.F.R.
26 §§ 245a.1(d) and 245a.2(d) without such records.
27 (3) Persons whose facially valid “lawful status” on or after January 1, 1982 was
28 obtained by fraud or mistake, whether such “lawful status” was the result of

- (a) reinstatement to nonimmigrant status;
- (b) change of nonimmigrant status pursuant to INA § 248;
- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

3. **Notice to Class Members**

A. General notice provisions

Defendants shall, within sixty (60) days from the date of the Court's final approval of this Settlement Agreement pursuant to Paragraph 18 below, issue a press release, and a Class Notice in English and Spanish (the texts of which are attached as Exhibit 1) announcing this Settlement Agreement. The press release, Class Notice, Class Member Worksheet (attached as Exhibit 2), and all necessary application forms shall be distributed to the media and community-based organizations according to CIS's normal procedure for doing so, with a copy of these lists provided to Class Counsel. The final Settlement, press release, Class Notice, Class Member Worksheet and Form I-687 shall at that time be posted on Defendants' web site in accordance with the regular practice for posting Forms and Settlement information on the site.

B. Individual notice to Sub-class C class members

Within 15 days of the district Court's final approval of this Settlement Agreement pursuant to Paragraph 18 below, Defendants shall forward an instruction to all District Offices, Regional Offices, and Service Centers to use reasonable efforts to identify Sub-class C members whose legalization applications were pending at any level of USCIS as of January 1, 2006. Within one week of issuing such instruction, Defendants shall provide a copy of the instruction to Plaintiffs' counsel. Within forty-five (45) days of the notice sent to District Offices, Regional Offices, and Service Centers, such offices shall use reasonable efforts to identify Sub-class C members whose legalization applications were pending at any level of USCIS. Defendants shall, within 90 days of the Court's final approval of this

1 Settlement Agreement pursuant to Paragraph 18 below, forward to Plaintiffs' counsel a
2 list (in Excel format) containing the name, A-Number, SSN (if available) and last known
3 address of applicants in Sub-class C pursuant to the instruction mentioned above. This
4 list will be provided pursuant to an agreed Protective Order, attached hereto.

5 In the event that defendants identify further potential Sub-class C members within
6 one (1) year after providing the initial list to class counsel, defendants shall within 30 days
7 of so identifying additional class members provide plaintiffs' counsel with the same
8 categories of information as in the initial list of Sub-class C members.

9 **4. Application procedures**

10 **A. Distribution of application materials**

11 Within sixty (60) days of the Court's final approval of this Settlement Agreement
12 pursuant to Paragraph 18 below and during the remainder of the application period
13 specified in ¶¶ 4B and 4C Defendants shall make available at their district offices the final
14 Settlement, press release, Class Notice and Class Member Worksheet, and Form I-687.

15 Within sixty (60) days of the Court's final approval of this Settlement Agreement
16 pursuant to Paragraph 18 below and during the remainder of the application period
17 specified in ¶ 4, Defendants shall make available to all persons upon oral or written
18 request, including a request submitted through its forms webpage, a copy of Form I-687,
19 Class Member Worksheet and instructions, and Form I-765. All forms and instructions
20 shall be as agreed herein.

21 **B. Application Period for Sub-class A and Sub-class B Members**

22 Defendants shall, within ninety (90) days after the issuance of Notices required in ¶
23 3A above, commence accepting NWIRP/IAP Class Membership Worksheets and Forms I-
24 687, Application for Status as a Temporary Resident, with fee and supporting
25 documentation, from individuals who assert they are Sub-class A or Sub-class B class
26 members as defined above. Defendants shall thereafter continue to accept such
27 worksheets and applications for twelve (12) months.
28

1 Applications shall be deemed filed on the date postmarked in accordance with the
2 provisions at 8 C.F.R. § 245a.12(a)(2007). All I-687 applications and motions to reopen
3 showing prima facie eligibility under INA § 245A submitted within the time frames
4 outlined in this Settlement Agreement shall be deemed timely filed applications under
5 Immigration and Nationality Act § 245A.

6 **C. Application Period for Sub-class C Members**

7 **1. Applicants Who Filed Initially During the Regular Application**
8 **Period (May 1987-May 1988) and Are Still Pending a Final Decision**
9 **or whose Lawful Temporary Residence has been Proposed for**
10 **Termination.**

11 Defendants shall, after the issuance of Notices required in ¶ 3A above, commence
12 adjudicating all pending subclass C.i. applications in accordance with the terms of this
13 Settlement Agreement. The Defendants shall, within a reasonable time, either approve
14 the application, or send notice of this settlement agreement in the form of Exhibit 1 (either
15 with or without a notice of intent to deny or request for evidence).

16 Class members whose timely filed applications are still pending or who have
17 received a notice of proposed termination of the approval of their applications, may (but
18 are not required to) submit a **NWIRP Class Member Worksheet** (Exhibit 2) to the USCIS.
19 Such **NWIRP Class Member Worksheet**, together with any available copies of their
20 timely filed applications, receipts, and any notices that the former INS or the USCIS sent
21 them regarding their applications are to be sent to: **NWIRP Worksheet, USCIS, California**
22 **Service Center, 24000 Avila Rd. 2nd Fl., Room 2312, Laguna Niguel, CA 92677.**

23 **2. Applicants Who Initially Filed During the Regular Application**
24 **Period (May 1987-May 1988) and Have Received a Final Denial of**
25 **Their Application or whose Lawful Temporary Residence has been**
26 **Terminated.**

27 Applicants who initially filed during the regular application period and have
28 received a final denial of their applications or whose Lawful Temporary Residence has
been terminated (Subclass C.ii.) may file a class member worksheet and motion to reopen
on Form I-290B (Notice of Appeal to the Administrative Appeals Office) with fee, at any 9
Settlement

1 time, but no later than one year after receiving the notice under Paragraph 3. of this
2 agreement. If a class member worksheet and motion to reopen are to be denied as
3 untimely under this paragraph, the Defendants shall have the burden of proving that the
4 class member actually received the notice under Paragraph 3 of this agreement, provided
5 that the class member files or filed the class member worksheet and motion to reopen
6 while physically present in the United States and not from abroad. A completed **NWIRP**
7 **Class Member Worksheet** and motion to reopen on Form I-290B shall be filed with fee at
8 USCIS, PO Box 805876, Chicago, Illinois, 60680-4120.

9 All I-687 applications and motions to reopen showing prima facie eligibility under
10 INA § 245A submitted within the time frames outlined in this Settlement Agreement shall
11 be deemed timely filed applications under Immigration and Nationality Act § 245A.

12 **5. Application fees**

13 There shall be no fee for filing a Class Member Worksheet. When under this
14 Settlement Agreement a filing fee may be charged, the fee shall be the fee applicable by
15 regulation or Federal Register Notice at the time of filing the application(s). Class
16 members who previously filed an I-687 with fee during the period May 5, 1987 to May 4,
17 1988 are not required under this Settlement Agreement to pay a new I-687 fee. However,
18 a Subclass C member whose I-687 application was previously denied, will be required to
19 pay the current motion to reopen filing fee to reopen the application

20 All class member applicants must file a Form I-765 with fee if they wish to receive
21 employment authorization. All applicants must pay the standard biometrics fee.

22 Applications timely filed and pending as of the date of this Settlement Agreement
23 under the settlements in *Catholic Social Services, Inc. v. Reno*, CIV No. S-86-1343 LKK (E.D.
24 Cal.), or *Newman; et al. v. Bureau of Citizenship and Immigration Services, et al.*, Civ. No. 87-
25 4757-WDK (C.D. Cal.), shall be adjudicated in accordance with the adjudications
26 standards described below in Paragraph 8B. No further fee is required of such applicants
27 in order for these provisions to apply.

1 Applications timely filed and pending as of the date of this Settlement Agreement
2 under § 1104 of the Legal Immigration Family Equity Act (LIFE Act), Title XI of H.R. 5548,
3 enacted by reference in Public Law 106-553 (Dec. 21, 2000), and the LIFE Act
4 Amendments, Title XV of H.R. 5666, *enacted by reference in* Public Law 106-554 (Dec. 21,
5 2000), shall be adjudicated in accordance with the adjudications standards described
6 below in ¶ 8B. No further fee is required of such applicants in order for these provisions
7 to apply.

8 CSS, *Newman*, and LIFE Act § 1104 applicants whose applications have been denied
9 but are approvable under the standards established in this settlement may file motions to
10 reopen in accordance with ¶ 4C2 above.

11 6. Adjudication of Class Member Worksheets

12 A. Adjudicatory standard

13 NWIRP Class Membership Worksheets shall be approved if, based on responses to
14 questions asked on the Worksheet, it appears more probable than not that the applicant
15 meets the class definition. A determination that an applicant is a class member is not
16 binding on Defendants for the purposes of an adjudication on the merits of the application
17 for temporary residence, which shall be conducted *de novo*. Class Member Worksheets
18 and any accompanying evidence of entry on a non-immigrant visa prior to January 1,
19 1982, shall not be disapproved solely because applicants do not possess Government-
20 issued records establishing class membership. Applicants, other than Subclass C
21 members, shall attach to the Class Member Worksheet any available evidence regarding
22 their non-immigrant entry into the United States before January 1, 1982, including, for
23 example, copies of passports, entry stamps, visa applications, I-94's, I-20's, airline travel
24 records, documents showing that they were present in the United States in non-immigrant
25 status prior to or shortly after January 1, 1982, or credible declarations regarding entry
26 prior to January 1, 1982 with a non-immigrant visa. If an applicant does not possess or is
27 unable to obtain this type of evidence, the applicant may submit a sworn statement that
28 identifies: (1) the U.S. Consulate where the pre-1982 non-immigrant visa was applied for,

1 (2) the approximate date that it was obtained, (3) the type of visa obtained, (4) the
2 approximate date when the visa was used to enter the United States, (5) where the
3 applicant entered the United States using the non-immigrant visa, and (6) includes a brief
4 description of any activities that the class member engaged in consistent with the terms of
5 the visa immediately after entering the United States. Applicants may also request that
6 the USCIS check its records, prior to an adjudication of the Worksheet, to determine if any
7 evidence exists of the alien's nonimmigrant entry prior to January 1, 1982. If the applicant
8 has (1) failed to sign a Class Member Worksheet or I-687, or (2) failed to attach an
9 appropriate fee, or (3) on the Class Member Worksheet or I-687 failed to state that he
10 commenced unlawful residence prior to January 1, 1982, or (4) is clearly statutorily
11 ineligible based on documents submitted with the application, then the application can be
12 rejected as improperly filed, and returned to the applicant. If the application is rejected as
13 improperly filed, then the application will be returned to the applicant with an
14 explanation for the rejection. The applicant may resubmit the application in proper form
15 within the filing period.

16 In order for a person to be eligible for benefits under this lawsuit, he or she must be
17 *prima facie* eligible for legalization, as that term is defined in 8 C.F.R. § 245a.1(n). A person
18 who claims eligibility as a derivative beneficiary (the spouse or child of a person who was
19 turned away by INS or a QDE during the legalization application period) must establish
20 that (1) the qualifying family relationship existed at the time the primary applicant was
21 turned away by INS or a QDE; and (2) he or she is otherwise eligible for legalization in his
22 or her own right.

23 **B. Notice of intent to deny**

24 Before denying an application for class membership, Defendants shall forward the
25 applicant or his or her representative a notice of intended denial explaining the perceived
26 deficiency in the applicant's Class Member Worksheet and providing the applicant thirty
27 (30) days to submit additional written evidence or information to remedy the perceived
28 deficiency.

1 **C. Written notice of reasons for denying class member worksheet**

2 Defendants shall send a written notice of any decision to deny a Class Member
3 Worksheet to the applicant and to his or her attorney of record, with a copy to Class
4 Counsel. The notice shall explain the reason for the denial of the Worksheet, and notify
5 the applicant of his or her right to seek review of such denial by a Special Master, on the
6 document attached as Exhibit 3. On review, neither Defendants nor the applicant shall be
7 permitted to submit new evidence to the Special Master.

8 **D. Approval of Class Member Worksheet of Applicants under Subclass C.ii.**

9 Upon approval of the Class Member Worksheet for Applicants under Subclass
10 C.ii., the Defendants shall reopen the denied I-687 or termination proceedings under 8
11 C.F.R. § 245a.2(u). Defendants shall adjudicate the reopened forms I-687 and termination
12 proceedings under the terms of paragraph 8 of this Agreement.

13 **7. Review by Special Master**

14 **A. Selection of the Special Master.**

15 Each party shall select one person, from a list of three names recommended by the
16 other party, to serve as a Special Master. Appeals from denial of applications for class
17 membership shall be assigned randomly to a Special Master. The two Special Masters
18 shall jointly designate the mailing address for appeals and determine procedures for
19 random assignment.

20 **B. Review of Decisions Involving Determination of Class Membership.**

21 Any decision by the Defendants denying an application for class membership may
22 be appealed to a Special Master. Any such appeal must be post-marked within thirty (30)
23 days of the date of mailing of the notice denying the application for class membership.
24 The Special Masters' review shall be a record review, based on the documents and other
25 evidence submitted by the applicant, and any documentary evidence relied upon by the
26 Defendants in reaching the decision to deny the application for class membership.

27 The Special Masters shall be paid a fee of \$125 for adjudicating each appeal under
28 this subparagraph. Payment of this fee shall be borne by the applicant. If the applicant

1 prevails, and it is determined to be a class member, the fee of \$125 shall be refunded to the
2 Applicant by defendants as court costs per order of the Special Masters.

3 **C. Review of Other Decisions.**

4 An applicant who believes that Defendants have violated his or her individual
5 rights pursuant to ¶¶ 3, 4, 5, 6, 10B, or 11, of this Settlement Agreement may file a claim
6 with the Special Masters. However, prior to filing any such claim, the applicant must
7 advise Defendants by certified mail, or other documented delivery service to an address
8 specified by Defendants, within 90 days of the discovery of the alleged violation that he or
9 she believes that Defendants have violated his or her rights under such paragraphs.
10 Defendants shall have forty-five (45) days from the date they are notified of the
11 applicant's intent to file a claim under this paragraph in which to investigate and, if
12 appropriate, rectify any deficiency. If within fifty (50) days after notifying Defendants of
13 his or her intent to file a claim, the applicant does not receive notice that Defendants have
14 sustained the applicant's challenge, then the applicant may file his or her appeal to a
15 Special Master. Any such appeal must be post-marked within eighty (80) days of the date
16 the applicant advised Defendants of the alleged violation.

17 The Special Masters shall be paid a fee of \$65 for adjudicating each appeal under
18 this subparagraph C. The applicant must pay the entire fee at the time he or she files the
19 notice of appeal. If the applicant prevails on the merits of his or her appeal, the fee of \$65
20 shall be refunded to the Applicant by defendants as court costs per order of the Special
21 Master.

22 **8. Adjudication of Applications for Temporary and Permanent Residence**

23 **A. General adjudicatory standards**

24 Defendants shall utilize the standards set forth in 8 C.F.R § 245a.18(d), or 8 C.F.R. §
25 245a.2(k)(4), which ever is more favorable to the applicant. Failure to provide evidence
26 other than affidavits shall not be the sole basis for finding that an alien failed to meet the
27 continuous residence and physical presence requirements. For purposes of establishing
28 residence and presence of subclass A and subclass B members within the meaning of 8

1 C.F.R. § 245a.2(b), the term “until the date of filing” shall mean until the date the alien
2 visited an INS or QDE office consistent with the Class Definition. In evaluating the
3 sufficiency of applicant’s proof of residence, Defendants shall take into account the
4 passage of time and attendant difficulties in obtaining corroborative documentation of
5 unlawful residence.

6 Where a Request for Evidence or Notice of Intent to Deny has been issued, an
7 application shall not be denied as abandoned pursuant to 8 C.F.R. § 103.2(b)(13) unless the
8 applicant is notified in writing of the consequences of failure to respond, including the
9 absence of a right to appeal, and informed of his/her right to a decision on the existing
10 record that may be appealed if the applicant notifies the CIS that he or she does not have
11 additional evidence to present.

12 An applicant’s appearance at an interview shall constitute a “request for a
13 decision” based on the evidence submitted for purposes of 8 C.F.R. § 103.2(b)(14).

14 **B. Standard for determining whether unlawful status “known to the**
15 **Government” or “continuity” of unlawful residence.**

16 With respect to the “known to the government” requirement in INA §
17 245A(a)(2)(b), Defendants shall adjudicate or readjudicate class members’ eligibility for
18 temporary residence in accordance with the following procedures:

19 1. With respect to individuals within Enumerated Category 1 and the “known to
20 the government” requirement of 8 U.S.C. § 1255a(a)(2)(B), the burden of proof shall shift
21 as follows: an applicant must make a *prima facie* showing that prior to January 1, 1982, the
22 applicant violated the terms of his or her non-immigrant status in a manner known to the
23 government because documentation or the absence thereof (including, but not limited to,
24 the absence of quarterly or annual address reports required on or before December 31,
25 1981) existed in the records of one or more government agencies which, taken as a whole,
26 warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in
27 a manner known to the government. Once the applicant makes such a showing, USCIS
28 then has the burden of coming forward with proof to rebut the evidence that the

1 applicant violated his or her status. If the USCIS fails to carry this burden, then it will be
2 found that the alien's unlawful status was known to the government as of January 1, 1982.
3 If USCIS does rebut the evidence that the applicant violated his status, the applicant must
4 then show by a preponderance of the evidence that he or she was in unlawful status for
5 some other reason and that this unlawful status was known to the government. At all
6 times, the applicant carries the burden of persuasion to prove eligibility for legalization.
7 Unrebutted evidence of the lack of required § 265 address reports from agency files shall
8 establish that the applicant's unlawful status was known to the government within the
9 meaning of 8 U.S.C. § 1255a(a)(2)(B).

10 2. With respect to individuals within Enumerated Category 2 and the "known to
11 the government" requirement of 8 U.S.C. § 1255a(a)(2)(B), the burden of proof shall shift
12 as follows: an applicant must make a prima facie showing that he or she violated the
13 terms of his or her duration of status visa prior to January 1, 1982. It is presumed that the
14 school or employer complied with the law and reported violations of status to the INS.
15 Upon an applicant's presenting prima facie evidence that he or she violated the terms of
16 his or her non-immigrant status, USCIS then has the burden to come forward with
17 evidence either that unlawful status did not occur through the passage of time or to rebut
18 the presumption that the unlawful status was reported to the government. The absence of
19 the school or employer report in government records is not alone sufficient to rebut this
20 presumption. If USCIS fails to carry this burden, then it will be found that the alien's
21 unlawful status was known to the government as of January 1, 1982. If USCIS comes
22 forward with this evidence, the applicant must show by a preponderance of the evidence
23 that he or she is eligible for legalization under either the "passage of time" or "known to
24 the government" standards. The applicant always has the burden of persuasion on this
25 point.

26 3. With respect to individuals within Enumerated Category 3, defendants shall
27 adhere to Matter of N, 19 I. & N. 760 (BIA 1988) (status obtained by fraud or mistake), in
28 adjudicating or re-adjudicating their applications for legalization or adjustment to lawful

1 permanent resident status. The alien bears the burden of establishing that he or she
2 obtained "lawful" status by fraud or mistake.

3 **C. Administrative appeals**

4 The Administrative Appeals Office shall adjudicate such appeals in accordance
5 with the standards set forth in this Settlement Agreement. Applicants are entitled to work
6 authorization during the pendency of such appeals as provided in INA § 245A. Appeals
7 and motions to reopen properly presented to the Administrative Appeals Office showing
8 prima facie eligibility under INA § 245A shall be deemed timely filed applications under
9 Immigration and Nationality Act § 245A.

10 **9. Issuance or Renewal of Employment Authorization and Travel Authorization**

11 **A. Employment Authorization.**

12 Defendants shall issue employment authorization to class members pursuant to 8
13 C.F.R. § 245a.2(n) and 8 C.F.R. § 274a.12(c)(22). Class member applications for
14 employment authorization and renewal of employment authorization shall be accepted
15 and adjudicated in accordance with 8 C.F.R. § 274a.13.

16 **B. Advance Parole**

17 Defendants shall adjudicate advance parole requests made by class members
18 pursuant to 8 C.F.R. § 212.5(f) and 8 C.F.R. § 245a.2(m), & (n).

19 **10. Time for Determining Class Membership and Legalization Applications**

20 **A. Class member worksheets**

21 Defendants shall use good faith and reasonable efforts either to approve Class
22 Membership Worksheets or to issue notices of intended denials of same within one
23 hundred and twenty (120) days of the date such applications are received by CIS. If a
24 notice of intended denial is issued, defendants shall endeavor to issue a final decision on
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1 the application for class membership within ninety (90) days after receipt of an applicant's
2 supplemental evidence or explanation, if any.

3 **B. Legalization applications**

4 Defendants shall use good faith and reasonable efforts to adjudicate I-687 or I-698
5 forms filed by class members within one hundred and eighty (180) days of the approval of
6 their Class Membership Worksheet. "Adjudication" as used in this paragraph includes
7 the mailing of a request for additional evidence or issuance of a notice of intent to deny.
8 The time it takes an applicant to respond to a request for additional evidence or a notice of
9 intent to deny shall not be included in the period of adjudication.

10 **C. Adjustment for high volume**

11 If the aggregate volume of Form I-687 applications received under this Settlement
12 Agreement and the Settlement Agreements reached in *CSS v. Ridge*, S86-1343-LKK (E.D.
13 Cal); *Newman v. DHS*, Civ 87-4757-WDK (C.D. Cal), exceeds two hundred forty thousand,
14 it is anticipated that the approximate processing times referenced in subparagraphs A and
15 B above will double. In the event Defendants believe good cause exists to extend the time
16 periods set forth above, such as in the case of excessive fraud, unexpected geographic
17 distribution of applications and skeletal applications, Defendants shall provide Class
18 Counsel with a written explanation of such cause and proposed alternative target periods.
19 The parties shall meet and confer in a good faith effort to resolve any disagreements over
20 proposed new target periods prior to petitioning this district court pursuant to ¶ 16
21 below.

22 **11. Confidentiality of Applications**

23 Subject to the terms of the attached Stipulation and Order of Protection Regarding
24 Privacy Act Information and Information Covered by 8 U.S.C. § 1255A(c)(5), Defendants
25 shall treat all applications, Class member worksheets, and materials filed pursuant to this
26 Settlement Agreement, including applications for employment authorization and advance
27 parole as confidential in accordance with 8 U.S.C. § 1255a(c)(5). The confidentiality
28

1 provisions in existence at the time of the access, use or disclosure of information in
2 applications determines the whether the access, use or disclosure is permissible.

3 **12. Reporting on Implementation of This Agreement**

4 Defendants shall file with Plaintiffs' counsel reports of their compliance with the
5 provisions described in ¶¶ 3-4. In addition, commencing four months after the beginning
6 of the filing period referenced in ¶ 4, Defendants shall prepare quarterly reports setting
7 forth the cumulative number of Subclass A and B Class Membership applications, Forms
8 I-687, and Forms I-765, that were received, approved, denied and pending. Copies of
9 such reports shall be provided to Class Counsel, within 30 days of the close of each
10 quarter.

11 **13. Costs and Attorneys Fees**

12 Defendants will pay plaintiffs attorneys fees and costs, as determined by a separate
13 agreement, hereby incorporated into this Settlement Agreement. Plaintiffs shall bear any
14 costs incurred by plaintiffs in connection with notifying the class of the terms and
15 conditions of this Stipulation.

16 **14. Duration of Agreement**

17 Unless the Settlement Agreement is terminated as provided at paragraph 21, and
18 except as provided in paragraph 4C2, the Settlement Agreement will remain in effect for
19 one year after the Defendants adjudicate the last I-687 application filed by a class member.
20 Defendants agree to promptly notify Class Counsel of the date it adjudicates the last such
21 application.

22 **15. Dismissal of Complaint, Dissolution of Injunctive Orders and Other Decisions**

23 In the event the district court approves this Settlement Agreement, the parties will
24 seek dismissal of this action pursuant to Paragraph 19 below. If the district court does not
25 approve settlement, this Settlement Agreement is null and void.

26 **16. Continuing Jurisdiction**

27 The parties agree that notwithstanding the filing and granting of any motion
28 pursuant to ¶ 15, the district court will retain jurisdiction in this action over only the

1 matters described in A and B below. Defendants reserve and do not waive any defenses
2 that they may have to a claim brought under this paragraph, including defenses without
3 limitation already raised in the litigation and defenses that may arise under new laws or
4 regulations.

5 A. Claims by Plaintiffs or Defendants that either party has engaged in a pattern
6 and practice of refusing to implement any of the relief set forth in this Agreement.

7 B. Claims by Plaintiffs that Defendants have expressly repudiated this Agreement.

8 C. As a prerequisite to bringing any such claim, at least sixty (60) days prior to
9 bringing any action pursuant to this provision, the parties shall meet and confer in a good
10 faith effort to resolve any of their differences. The party alleging non-compliance has the
11 burden of initiating the meet and confer. The parties agree that the Court lacks
12 jurisdiction where there has been no meaningful effort by the movant to first meet and
13 confer pursuant to this provision.

14 D. Any action under this provision must be brought no later than one year after
15 Defendants adjudicate the last I-687 legalization application filed by a class member.

16 **17. Class Counsel**

17 Class Counsel for the purposes of this Settlement Agreement are Robert H. Gibbs
18 and Robert Pauw, Gibbs, Houston and Pauw, 1000 Second Ave, Suite 1600, Seattle, WA
19 98104 (206) 682-1080, and Peter Schey and Carlos Holguín, Center for Human Rights and
20 Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057 (213) 388-8693. Each
21 document required to be served on Class Counsel under this Agreement will be served on
22 the Class Counsel designated to receive such document by Class Counsel pursuant to this
23 paragraph within 20 days of the Court's approving this Settlement Agreement.

24 **18. Approval of Agreement**

25 This Agreement has been approved by authorized representatives of the Secretary
26 of the U.S. Department of Homeland Security, and the Assistant Attorney General, United
27 States Department of Justice.

1 This Agreement is subject to approval by the United States District Court pursuant
2 to Federal Rule of Civil Procedure 23. Concurrently with their filing of this Stipulation,
3 Class Counsel and Defendants' Counsel shall jointly apply to the Court for preliminary
4 Court approval of the Settlement contemplated by this Stipulation and entry of a
5 Preliminary Approval Order, substantially in the form appended hereto as Exhibit 4.
6 Such Preliminary Approval Order will seek approval of a Notice to the Class, as well as a
7 finding that the following satisfies the publication requirements of Fed. R. Civ. P. 23: (1)
8 Defendants shall post the Settlement Agreement and the Exhibits attached to the
9 Settlement Agreement in appropriate places on the USCIS website. www.uscis.gov (2)
10 Plaintiffs shall post the Settlement Agreement and the Exhibits attached to the Settlement
11 Agreement in appropriate places on plaintiffs' counsels' websites.
12 www.centerforhumanrights.org and www.ghp-law.net (3) Defendants shall distribute
13 the Settlement agreement and the Exhibits attached to the Settlement agreement to all
14 immigration assistance providers listed, as of the Effective Date of this Settlement, on the
15 Roster of Recognized Organizations and Accredited Representatives maintained by the
16 Executive Office for Immigration Review pursuant to 8 C.F.R. § 292 and § 1292, and the
17 Pro Bono Program section of the EOIR website.

18 **19. Terms of Order and Final Judgment**

19 If the Settlement contemplated by this Stipulation is approved by the Court,
20 counsel for the parties shall request that the Court enter Final Judgment and dismissal of
21 this action substantially in the form appended hereto as Exhibit 5.

22 **20. Effective Date of Settlement, Waiver or Termination**

23 The Effective Date of this Stipulation shall be the date when all the following shall
24 have occurred:

25 (A) entry of the Preliminary Approval Order in all material respects in
26 the form appended hereto as Exhibit 4;

27 (B) approval by the Court of the Settlement, following notice to the Class
28 and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

1 (C) entry by the Court of Final Judgment, in all material respects in the
2 form appended hereto as Exhibit 5, and the expiration of any time for appeal or review of
3 such Final Judgment, or, if any appeal is filed and not dismissed, after such Final
4 Judgment is upheld on appeal in all material respects and is no longer subject to review
5 upon appeal or review by writ of certiorari, or, in the event that the Court enters an order
6 and final judgment in a form other than that provided above ("Alternative Judgment")
7 and none of the parties hereto elects to terminate this Settlement, the date that such
8 Alternative Judgment becomes final and no longer subject to appeal or review by writ of
9 certiorari.

10 **21. Termination of Settlement and Stipulation**

11 Defendants' Counsel or Class Counsel shall have the right to terminate the
12 Settlement and this Stipulation by providing written notice of their election to do so
13 ("Termination Notice") to all other parties hereto within thirty (30) days of (a) the Court's
14 declining to enter the Preliminary Approval Order or modification of that Preliminary
15 Approval Order in any material respect; (b) the Court's declining to approve the
16 Settlement embodied in this Stipulation, or any material part of it; (c) the Court's
17 declining to enter the Final Judgment or modification of the Final Judgment in any
18 material respect; (d) the date upon which the Final Judgment is modified, reversed, or
19 vacated in any material respect by the Court, the Court of Appeals or the United States
20 Supreme Court; or (e) the date upon which an Alternative Judgment is modified,
21 reversed, or vacated in any material respect by the Court, the Court of Appeals or by the
22 United States Supreme Court.

23 Except as otherwise provided herein, in the event the Settlement is terminated or
24 modified in any material respect or fails to become effective for any reason, then the
25 Settlement shall be without prejudice and none of its terms shall be effective or
26 enforceable; the parties to this Stipulation shall be deemed to have reverted to their
27 respective status in the Action as of the date and time immediately prior to the execution
28 of this Stipulation; and except as otherwise expressly provided, the parties shall proceed

1 in all respects as if this Stipulation and any related orders had not been entered. In the
2 event the Settlement is terminated or modified in any material respect, the Defendants
3 shall be deemed not to have waived, modified, or be estopped from asserting any
4 additional defenses available to them.

5 **22. No Admission of Wrongdoing**

6 This Stipulation, whether or not consummated, and any proceedings taken
7 pursuant to it:

8 (A) shall not be construed to waive, reduce or otherwise diminish the
9 authority of the Defendants to enforce the laws of the United States against class members
10 notwithstanding the terms of this Stipulation, consistent with the Constitution and laws of
11 the United States.

12 (B) shall not be offered or received against the Defendants as evidence of,
13 or construed as or deemed to be evidence of, any presumption, concession, or admission
14 by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of
15 any claim that had been or could have been asserted in the Action or in any litigation, or
16 the deficiency of any defense that has been or could have been asserted in the Action, or
17 of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by
18 the Defendants of any violations of, or failure to comply with, the Constitution, laws or
19 regulations.

20 (C) shall not be offered or received against the Defendants as evidence
21 that failure to provide documents within the time frame set forth herein, or within any
22 time frame, is unjustified or illegal; and
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1 (D) shall not be offered or received against the Defendants as evidence of
2 a presumption, concession, or admission of any liability, negligence, fault or wrongdoing,
3 or in any way referred to for any other reason as against any of the parties to this
4 Stipulation, in any other civil, criminal, or administrative action or proceeding, other than
5 such proceedings as may be necessary to effectuate the provisions of this Stipulation;
6 provided, however, that if this Stipulation is approved by the Court, Defendants may
7 refer to it and rely upon it to effectuate the liability protection granted them hereunder.

8 **23. Additional Provisions**

9 A. This Stipulation, and the obligations incurred herein, shall be in full and
10 final disposition of the Action with prejudice and any and all Settled Claims against
11 Defendants. On the Effective Date, Plaintiffs shall be deemed to have fully, finally, and
12 forever released, relinquished, and discharged the defendants of and from any and all
13 Settled Claims.

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

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

19 D. The headings herein are used for the purpose of convenience only and are
20 not intended to have legal effect.

21 E. The waiver by one party of any breach of this Stipulation by any other party
22 shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

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

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

5 H. This Stipulation shall be binding upon, and inure to the benefit of, the
6 successors and assigns of the parties hereto.

7 I. This Stipulation shall not be construed more strictly against one party than
8 another merely by virtue of the fact that it, or any part of it, may have been prepared by
9 counsel for one of the parties, it being recognized by the parties that this Stipulation is the
10 result of arms' length negotiations between the parties and that all parties have
11 contributed substantially and materially to the preparation of this Stipulation.

12 J. All counsel and any other person executing this Stipulation and any of the
13 exhibits hereto, or any related settlement documents, warrant and represent that they
14 have the full authority to do so and that they have the authority to take appropriate action
15 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

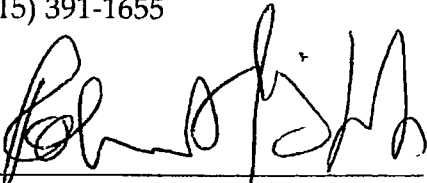
16 K. Class Counsel and Defendants' Counsel agree to cooperate fully with one
17 another in seeking Court approval of the Preliminary Order in Connection with the
18 Settlement Proceedings, the Stipulation and Agreement of Settlement, and to promptly
19 agree upon and execute all such other documentation as may be reasonably required to
20 obtain final approval by the Court of the Settlement.

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27 Dated: 5/25/08, 2008.
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1 GIBBS, HOUSTON PAUW
2 Robert H. Gibbs, WSBA 5932
3 Robert Pauw

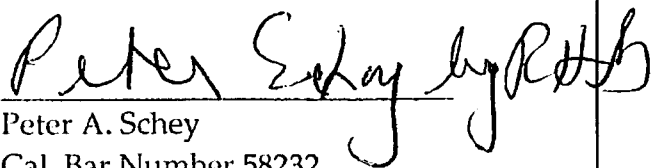
CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Peter A. Schey
Carlos R. Holguin

4 ALTSHULER, BERZON, NUSSBAUM,
5 RUBIN & DEMAIN
6 Michael Rubin
7 177 Post Street, Suite 300
8 San Francisco, CA 94108
9 (415) 391-1655

10 

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15 Seattle, WA 98104
16 Telephone: (206) 224-8790
17 Fax: (206) 689-2270
18 E-mail: rgibbs@ghp-law.net

19 *Counsel for Plaintiffs*

20 

21 Peter A. Schey
22 Cal. Bar Number 58232
23 CENTER FOR HUMAN RIGHTS
24 & CONSTITUTIONAL LAW
25 256 S. Occidental Blvd.
26 Los Angeles, CA 90057
27 Telephone: (213) 388-8693
28 Fax: (213) 386-9484
29 E-mail: pschey@centerforhumanrights.org

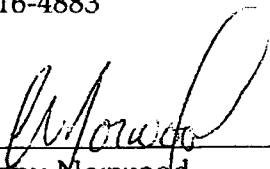
30 ///

31 Dated: May 27, 2008.

32 Anthony Norwood
33 U.S. Department of Justice
34 Office of Immigration Litigation

35 Settlement

1 P.O. Box 878, Ben Franklin Station
2 Washington, DC 20044
3 202-616-4883

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5 _____
6 Anthony Norwood

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT,) Case No. 88-379R
ET AL.,)
Plaintiffs,) Exhibit 1
vs.) CLASS NOTICE
U.S. CITIZENSHIP AND IMMIGRATION)
SERVICES, ET AL.,)
Defendants.)
_____)

IMPORTANT CLASS NOTICE

This Notice contains important information that may pertain to you. Please read it carefully.

Under the Court-approved settlement in *Northwest Immigrant Rights Project, et al., v. United States Citizenship and Immigration Services* ("NWIRP"), formerly known as *Immigrant Assistance Project v. INS* ("IAP"), certain individuals who were turned away when they attempted to apply for legalization or "amnesty" under the Immigration Reform and Control Act of 1986 may now apply for legalization.

The settlement also allows certain individuals who filed applications and whose applications were denied for certain reasons, to move to reopen the application with the United States Citizenship and Immigration Services ("CIS") to have the application decided under specified legal standards.

The individuals entitled to benefits under the Court's order are *NWIRP* class members.

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WHO IS A *NWIRP* CLASS MEMBER?

The requirements for *NWIRP* class membership are quite complex, and you should consult a qualified attorney or community-based immigrant assistance agency if you think there is any possibility that you may be a *NWIRP* class member.

In summary, you must meet three types of requirements to be a *NWIRP* class member:

- (1) General legalization requirements. You must meet all of the following general requirements for legalization:
 - (a) You entered the United States on a non-immigrant visa (for example a visitor's visa, or student visa, or temporary worker visa) prior to January 1, 1982; and
 - (b) You lived continuously and illegally in the United States from prior to January 1, 1982 until some time between May 5, 1987, and May 4, 1988, when you visited the INS or a Qualified Designated Entity ("QDE") to apply for legalization under the 1986 "amnesty" law; and
 - (c) You have not been convicted of certain criminal offenses: (1) one felony or three misdemeanors in the United States, (2) any crime involving moral turpitude, such as theft or fraud, except a single petty offense or a juvenile conviction, or (3) any drug offense, except simple possession of marijuana under 30 grams.
- (2) *NWIRP* requirements. Next, you must fall into at least one of the following three categories:
 - (a) You violated your nonimmigrant status prior to January 1, 1982 and the violation of status is evident based on a review of federal government files (for example, you worked without authorization before January 1, 1982 and you have Social Security records, tax records, or other federal government records to show income relating to your pre-1982, unauthorized work in your name; or you were here with a non-immigrant visa and before 1982, you failed to file annual or quarterly address reports with the INS, as then required by the law); or
 - (b) You entered the United States prior to January 1, 1982 as a student (on "F" or "J" visa) or as a temporary workers (on "H" or "L" visa), and you failed to maintain your status through January 1, 1982 (for example, before January 1, 1982, you dropped out of school, took less than a full course of

1 study, transferred schools without advance INS authorization, or terminated
2 your authorized H or L employment); or

3 (c) After January 1, 1982, you obtained reinstatement to nonimmigrant status,
4 or entry into the United States on a nonimmigrant visa, or a change of
5 nonimmigrant status, or adjustment of status, or some other immigration
6 benefit that apparently put you in lawful immigration status, though you
7 did not qualify for such benefit (for example, because when you applied for
the benefit, you did not inform INS or the consulate that you had previously
worked without authorization).

8 (3) Filing/front-desking requirements. Finally, you must have made a significant effort
9 to apply for legalization during the 1987-88 application year. You must have done
10 one or more of the following:

11 (a) Between May 5, 1987 and May 4, 1988, you attempted to file a complete
12 application for legalization under § 245A of the INA and fees with an INS
13 officer or agent acting on behalf of the INS, including a QDE,¹ and had your
application rejected for filing; or

14 (b) Between May 5, 1987 and May 4, 1988, you attempted to apply for
15 legalization with an INS officer, or agent acting on behalf of the INS,
16 including a QDE, but were advised that you were ineligible for legalization,
17 or were refused a legalization application form, and this information, or
18 inability to obtain an application form, was a substantial cause of your
19 failure to file or complete a timely written application; or

20 (c) You filed an application for legalization between May 5, 1987 and May 4,
21 1988; and

22 (i) no final decision has been made on your application and it remains
23 pending; or

24 (ii) your application was denied, or

25 (iii) your application was initially approved and then later terminated (or
26 proposed for termination) because your violation of status prior to
27 January 1, 1982 was not "known to the government," or because you

28 ¹ QDEs were usually community-based non-profit organizations (such as Catholic
Charities) that were authorized to accept amnesty applications for the INS.
Settlement

1 were reinstated to nonimmigrant status or granted a visa or some
2 other benefit that put you in a lawful immigration status.

3 **ANSWERS TO FREQUENTLY ASKED QUESTIONS**

4
5 • **What are the benefits of class membership?**

6 Certain class members who attempted to file applications (as described in the Worksheet
7 at III) during the 1986-87 amnesty application year may apply now for legalization under
8 the 1986 amnesty law. Class members who were able to timely file an application during
9 the 1987-88 application year, but had their applications denied or left undecided may now
10 have their applications decided under the specified legal standards of this settlement.

11 While their legalization applications (or requests for decision or reconsideration) are
12 pending, class members are entitled to remain in the United States and to employment
13 authorization. Class members may also be granted advance parole.

14 Class members whose legalization applications are approved will receive "Temporary
15 Resident Status," and 18 months later become eligible to apply for permanent residence.

16 Class members granted temporary residence may have their spouses and children apply
17 to remain with them in the United States under "family unity" status if the family
18 member resided in the United States on May 4, 1988. Persons who have applied for and
19 been granted family unity status may receive work authorization and permission to
20 remain in the United States lawfully.

21 • **How do I prove I am a class member?**

22 *Persons who filed during the 1987-88 application year.* Class members whose timely filed
23 applications are still pending or who have received a notice of proposed termination of
24 the approval of their applications, may (but are not required to) submit a **NWIRP Class
25 Member Worksheet** to the USCIS. Such **NWIRP Class Member Worksheet**, together
26 with any available copies of their timely filed applications, receipts, and any notices that
27 the former INS or the USCIS sent them regarding their applications to **NWIRP Worksheet,**
28 **USCIS, California Service Center, 2400 Avila Rd. 2nd Fl., Room 2312, Laguna Niguel, CA
92677.**

Persons who were turned away during the 1987-88 application year. If you did not manage to
get a legalization application on file during the 1987-88 application year, then you must
submit a "Class Member Worksheet" and application for temporary residence (Form I-
687) to the CIS.

1 USCIS will generally decide within 120 days whether or not it agrees that you are a class
2 member. If the CIS thinks you are not a class member, you will be given an opportunity to
3 submit evidence that you are. You may do this by producing a copy of your original 1987-
4 88 amnesty application or declarations from persons who know you tried to apply for
legalization between May 1987 and May 1988, but were turned away.

5 Applicants, other than Subclass C members, shall attach to the Class Member Worksheet
6 any available evidence regarding their non-immigrant entry into the United States before
7 January 1, 1982, including, for example, copies of passports, entry stamps, visa
8 applications, I-94's, I-20's, airline travel records, documents showing that they were
9 present in the United States in non-immigrant status prior to or shortly after January 1,
10 1982, or credible declarations regarding entry prior to January 1, 1982 with a non-
11 immigrant visa. If an applicant does not possess or is unable to obtain this type of
12 evidence, the applicant may submit a sworn statement including the U.S. Consulate
13 where the pre-1982 non-immigrant visa was applied for, the approximate date that it was
obtained, the type of visa obtained, the approximate date when the visa was used to enter
the United States, where the applicant entered the United States using the non-immigrant
visa, and a brief description of any activities that the class member engaged in consistent
with the terms of the visa immediately after entering the United States.

14 If despite such evidence, the CIS still believes you are not a class member, then you may
15 appeal to a court official, called a Special Master, who will decide whether you are a class
16 member.

17 • How long do I have to apply for class member benefits?

18 If you were prevented from filing for legalization during the 1987-88 application year, you
19 must submit a Class Member Worksheet and completed legalization application form to
20 the USCIS in the 12 month period beginning _____, and ending _____. [To
be inserted according to Paragraph 4B of the Settlement]

21 If you filed a legalization application during the legalization application period from May
22 1987 to May 1988 but have never had that application decided, the USCIS will now decide
23 your application. You may (but are not required to) send to the USCIS a class member
24 worksheet and a letter requesting that the USCIS now make a decision on your
25 application, and if available to you, attach copies of your application filed in 1987-88, your
26 receipt, and any notices that the former INS or CIS sent you regarding your application.

27 If you filed a legalization application during the legalization application period from May
28 1987 to May 1988, but the INS denied your application (and you did not file an appeal to
the AAO or the AAO denied your appeal), you may file a motion to reopen (re-decide)
your application within one year from the date you receive a written notice of this
settlement mailed to you by the CIS.

- 1 • What if I have already applied for legalization as a *Catholic Social Services (CSS)* or
2 *Newman/LULAC* class member, or have applied for residence under the LIFE Act?

3 Under the terms of the settlement, CIS will apply the *NWIRP* adjudication standards to
4 *CSS/Newman* and LIFE Act applications. If your application was denied without proper
5 consideration of the standards of Paragraph 8 of this settlement, you may ask for your
6 *CSS/Newman* or LIFE Act case to be reopened. You must submit a Class Member
7 Worksheet and a Form I-290B. You should consult with an attorney or community-based
8 legal services organization about your rights and remedies.

- 9 • If I am denied legalization, will I be deported?

10 Under the amnesty law, applications and the information they contain are confidential
11 and generally may not be used to put you into removal (deportation) proceedings.
12 Generally, the information in your application may only be used to make a determination
13 on your application for amnesty, or, if you commit fraud in the application, to prosecute
14 you criminally.

- 15 • Where can I obtain forms and further information?

16 For further information and forms, go to the web site of class counsel,
17 www.centerforhumanrights.org, and www.ghp-law.net Forms and information are also
18 available on the U.S. Citizenship and Immigration Service's web site, www.uscis.gov/

19 You may also contact the lawyers representing the class:

20
21 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
22 256 S. Occidental Blvd.,
23 Los Angeles, CA 90057
24 (213) 388-8693, exts. 104 or 109
25 E-mail: amnestycoordinator@centerforhumanrights.org

26
27 GIBBS HOUSTON PAUW
28 1000 Second Ave., Suite 1600,
Seattle, WA 98104
(800) 654-9155
E-mail: info@ghp-law.net

Do not contact the Court for information.

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE
5

6 NORTHWEST IMMIGRANT RIGHTS PROJECT,) Case No. 88-379R
7 ET AL.,)
8 Plaintiffs,) Exhibit 2
9 vs.) INSTRUCTIONS AND CLASS MEMBER
10) WORKSHEET
11 U.S. CITIZENSHIP AND IMMIGRATION)
12 SERVICES, ET AL.,)
13 Defendants.)
14 _____)

15 INSTRUCTIONS
16

17 The attached Class Member Worksheet should be completed by persons who believe they
18 are *IAP/NWIRP* class members and who wish to apply to legalize their status under the
19 1986 Immigration Reform and Control Act.

20 Use this form if (1) the Immigration and Naturalization Service ("INS") or a Qualified
21 Designated Entity ("QDE")² rejected your application and filing fees for legalization or
22 "amnesty" between May 5, 1987 and May 4, 1988; or (2) you filed a legalization
23 application during the 1987-88 application year, but your application was denied (or your
24 temporary residence was revoked or proposed for revocation). You may, but are not
25 required to, use this form if you filed a legalization application during the 1987-88
26 application year, but your application has still not been decided, or you have an appeal of
27 a denial of your timely application that is still pending at the Administrative Appeals
28 Office (AAO). You may submit whatever additional evidence you have to support your
application to the United States Citizenship and Immigration Services ("USCIS"), and the
your application will be adjudicated.

² QDEs were usually community-based non-profit organizations (such as Catholic Charities) that were authorized to accept amnesty applications for the INS.

1 You may consult with an accredited community organization, church group or lawyer to
2 help you fill out this form.

3 **The benefits of class membership.**

4 The primary benefit of class membership is that you will be able to apply for legalization
5 and receive a decision based upon specified legal standards.

6 The basic issue asserted by *IAP/NWIRP* class members is that during the 1987-88
7 legalization program the INS or QDE concluded that they were ineligible for legalization
8 because their unlawful status was not "known to the government" prior to January 1,
9 1982.

10 In *IAP/NWIRP*, it was argued that students and other "nonimmigrants" violated their
11 status whenever they failed to report their addresses to the INS or when they failed to
12 take the required number of units at school. It was argued that such violations were in all
13 likelihood known to the government, precisely because the required reports were not
14 made or because schools were required to report foreign students whenever they failed to
15 take the required number of units. It was argued that a pre-1982 violation of status was
16 presumptively "known to the government" if you failed to file address reports, failed to
17 maintain full-time student status, or worked without authorization. Class members who
18 obtained a visa or were reinstated to lawful status after January 1, 1982, based upon a
19 false statement may also apply for consideration under the terms of this agreement.

20 Class members whose legalization applications are approved are first granted
21 "Temporary Resident Status." Eighteen months later, these class members may apply for
22 permanent resident status. In addition the spouses and minor, unmarried children (who
23 arrived in the United States before 5/4/1988) of *approved* applicants may be eligible for
24 family unity benefits (work authorization and a stay of removal) while they wait to
25 immigrate through their newly legalized family member.

26 In addition, class member are entitled to work authorization and protection against
27 removal (deportation) while their applications are pending.

28 **Determining whether you are an *IAP/NWIRP* class member.**

The requirements for *IAP/NWIRP* class membership are quite complex, and you should
consult a qualified attorney or community-based immigrant assistance agency if you think
there is any possibility that you may be a *IAP/NWIRP* class member.

In summary, you must meet three types of requirements to be an *IAP/NWIRP* class
member:

1 (1) Basic eligibility for legalization. You must appear to meet all of the following basic
2 requirements for legalization:

- 3 (a) You entered the United States on a non-immigrant visa (for example a
4 visitor's visa, or student visa, or temporary worker visa) prior to January 1,
5 1982; and
- 6 (b) You lived continuously and illegally in the United States from prior to
7 January 1, 1982 until some time between May 5, 1987 and May 4, 1988, when
8 you visited the INS or a Qualified Designated Entity ("QDE") to apply for
9 legalization under the 1986 "amnesty" law; and
- 10 (c) You have not been convicted of certain criminal offenses: (1) one felony or
11 three misdemeanors in the United States, (2) any crime involving moral
12 turpitude, such as theft or fraud, except a single petty offense or a juvenile
13 conviction, or (3) any drug offense, except simple possession of marijuana
14 under 30 grams.

15 (2) IAP/NWIRP requirements. Next, you must fall into at least one of the following
16 three categories:

- 17 (a) You violated your nonimmigrant status prior to January 1, 1982 and the
18 violation of status is evident based on a review of federal government files
19 (for example, you worked without authorization before January 1, 1982 and
20 you have Social Security records, tax records, or other federal government
21 records to show income relating to your pre-1982, unauthorized work in
22 your name; or you were here with a non-immigrant visa and before 1982,
23 you failed to file annual or quarterly address reports with the INS, as then
24 required by the law); or
- 25 (b) You entered the United States prior to January 1, 1982 as a student (on "F"
26 or "J" visa) or as a temporary workers (on "H" or "L" visa), and you failed
27 to maintain your status through January 1, 1982 (for example, before
28 January 1, 1982, you dropped out of school, took less than a full course of
study, transferred schools without advance INS authorization, or terminated
your authorized H or L employment); or
- (c) After January 1, 1982, you obtained reinstatement to nonimmigrant status,
or entry into the United States on a nonimmigrant visa, or a change of
nonimmigrant status, or adjustment of status, or some other immigration
benefit that apparently put you in lawful immigration status, though you
did not qualify for such benefit (for example, because when you applied for

1 the benefit, you did not inform INS or the consulate that you had previously
2 worked without authorization).

- 3 (3) Attempt to file timely application. Finally, you must have made a significant effort
4 to apply for legalization between May 5, 1987 and May 4, 1988.

5 You must have either filed an application for legalization or attempted to apply at
6 an INS or QDE office between May 5, 1987 and May 4, 1988, and been denied an
7 application form, told that you were ineligible for legalization, or told that your
8 application for legalization would not be accepted.

8 **Proving that you meet the three requirements of IAP/NWIRP class membership.**

9 You must file an I-687 together with your Class Member Worksheet, as described below.
10 However, if you filed an application for legalization during the application period
11 between May 5, 1987 and May 4, 1988 and your application remains pending or was
12 denied, you do not have to file a new I-687 form. If your application remains pending (at
13 the District Office, Regional Office or Service Center), then you may, but are not required
14 to, submit a Class Member Worksheet to USCIS. If your 1987-88 application was denied,
15 you must file a motion to reopen on Form I-290B to USCIS.

14 **Filling out and filing the Notice of Class Member Worksheet and other forms.**

15 Fill in a Class Member Worksheet by checking the appropriate boxes. You can obtain this
16 form from your local USCIS (formerly called the INS) office. Local community groups and
17 immigration lawyers may also have the forms available. You can also obtain the forms
18 from the USCIS web site, www.uscis.gov, or class counsels' web pages, www.ghp-law.net, or www.centerforhumanrights.org.

19 There is no separate fee for filing a Class Member Worksheet.

20 You will need to prepare and file the following forms:

- 21
- 22 (1) If you assert that the INS or a QDE rejected your application between May 5, 1987
23 and May 4, 1988, then you must file the Class Member Worksheet together with an
24 Application for Status as a Temporary Resident (Form I-687).
- 25 (2) If you filed a legalization application between May 5, 1987 and May 4, 1988, but
26 your timely application remains pending (at a District Office, Regional Office, or
27 Service Center), then you may but are not required to file a Class Member
28 Worksheet.
- (3) If you filed a legalization application between May 5, 1987 and May 4, 1988, but
your application has been denied (either at the District Office, Service Center or the

1 Administrative Appeals Office), then you must file a Class Member Worksheet
2 together with a Form I-290B and filing fee.

3 If you request work authorization, then you must submit an Application for Employment
4 Authorization (Form I-765) together with the filing fee. Class members are entitled to
5 temporary employment and advance parole while their applications or timely filed
6 appeals from any denials of class membership or legalization are pending.

7 Subclass A and B members (those who were turned away when they attempted to file
8 legalization applications in 1987-88) must attach to the Class Member Worksheet any
9 available evidence regarding their non-immigrant entry into the United States before
10 January 1, 1982, including, for example, copies of passports, entry stamps, visa
11 applications, I-94's, I-20's, airline travel records, documents showing that they were
12 present in the United States in non-immigrant status prior to or shortly after January 1,
13 1982, or credible declarations regarding entry prior to January 1, 1982 with a non-
14 immigrant visa. If an applicant does not possess or is unable to obtain this type of
15 evidence, the applicant may submit a sworn statement including the U.S. Consulate
16 where the pre-1982 non-immigrant visa was applied for, the approximate date that it was
17 obtained, the type of visa obtained, the date when the visa was used to enter the United
18 States, where the applicant entered the United States using the non-immigrant visa, and a
19 brief description of any activities that the class member engaged in consistent with the
20 terms of the visa immediately after entering the United States. Applicants may also
21 request that the USCIS check its records, prior to an adjudication of the Worksheet, to
22 determine if any evidence exists of the alien's nonimmigrant entry prior to January 1,
23 1982.

24 If you are filing a Class Member Worksheet together with either an I-687 or I-290B form
25 (Subclass B or C(i)), then mail the completed Class Member Worksheet together with the
26 appropriate forms and filing fees, and four passport photos, and the current biometrics
27 fee, as follows. If you are sending the Worksheet and forms via U.S. Postal Service:

28 U.S. Citizenship and Immigration Services
P.O. Box 805876
Chicago, IL 60680-4120

If you are sending the Worksheet and forms via any other means:

US Citizenship and Immigration Services
427 S. LaSalle, 3rd Floor
Chicago, IL 60605-1029

1 If you are filing only a Class Member Worksheet to notify USCIS of your pending I-687
2 application (Subclass C(ii)), mail the Class Member Worksheet to:

3 NWIRP Worksheet
4 USCIS
5 National Benefits Center
6 P.O. Box 9001
Lee's Summit, MO 64002-9001

7 Be sure to keep a copy of everything that you submit to the USCIS, including your filing
8 fee checks or money orders. It is strongly recommended that you send your application
9 documents by a method that provides proof of delivery, such as USPS Priority Mail with
10 Confirmation, or FedEx, UPS or DHL. You may also send a copy of your application to
class counsel at the address below.

11 **Filing deadline**

12 If your application was rejected between May 5, 1987 and May 4, 1988, you must submit a
13 Class Member Worksheet and completed legalization application form to the USCIS in the
14 12 month period beginning _____, and ending _____. [insert dates
pursuant to Paragraph 4B of the Settlement]

15 If you filed a legalization application during the May 5, 1987 and May 4, 1988 application
16 year but the INS denied your application you may file a motion to reopen (re-decide)
17 your application at any time but no later than one year from the date you receive a
written notice of this settlement sent to you by the CIS.

18 **Processing your Class Member Worksheet.**

19 USCIS will decide within 120 days whether it agrees that you are a class member. If
20 USCIS agrees that you are a class member, it will then decide your legalization
21 application. Normally, this will take an additional 180 days.

22 If the USCIS opposes your class membership, it will issue you a Notice of Intent To Deny
23 your class membership. You will then have 30 days to submit additional evidence that
24 you are a class member. The USCIS will then have 90 days to decide whether it still
25 opposes your class membership. If it does, you will have 30 days to ask a court officer,
26 known as a Special Master, to decide whether you are a class member. If the Special
Master decides that you are a class member, USCIS will then process your legalization
27 application in accordance with the time limits previously described.
28

1
2 **Processing your I-687 legalization application.**

3 The settlement requires the USCIS to adjudicate *IAP/NWIRP* class members' legalization
4 applications just as though they had been filed during the original 1987-88 application
5 year, except the USCIS will apply the specified "known to the government" and
6 continuous unlawful residence standard.

7 While your properly filed I-687 application or Motion to Reopen is pending, you are
8 entitled to protection against removal (deportation) and to apply for work authorization.
9 You must apply for employment authorization by submitting a Form I-765 along with
10 your I-687 legalization application and Class Member Worksheet. An employment
11 authorization card (EAD) will be issued to you if the USCIS agrees you are a class
12 member.

13 Class members whose legalization applications the USCIS intends to deny will be sent a
14 notice of intended denial and will have at least 30 days to correct whatever problems the
15 USCIS identifies in the legalization application.

16 Class members whose legalization applications the USCIS denies are entitled to appeal to
17 the USCIS Administrative Appeals Office. You will have 30 days to file such an appeal. To
18 make sure that your appeal time does not run out before you get notice of a denial, be
19 sure to keep USCIS informed of your current address.

20 **Confidentiality.** Unless you commit fraud, all the information you submit in connection
21 with an *IAP/ NWIRP* Class Member Worksheet or legalization application may generally
22 be used only to decide those applications and, generally, may not be used to obtain a
23 removal (deportation) order against you.

24 **Travel.** You may apply for advance parole while your application is pending by
25 submitting a Form I-131 application, together with the applicable filing fee and photos.
26 The Form I-131 can be submitted with your initial application or later.

27 Class counsel strongly recommend, however, that you not leave the country until after
28 you have received Temporary Residence. Obtaining travel authorization (advance parole)
does not guarantee that you are admissible to the United States, and your legalization
application could also be denied while you are outside of the country.

Family members. Family members do not obtain legalization merely by being listed on
your legalization application. Each applicant must qualify independently for legalization.

However, the spouses and unmarried children of *NWIRP* class members who become
Temporary Residents are eligible to apply for "family unity" benefits if they resided in the
United States on May 5, 1988. Family members granted such benefits will be permitted to

1 stay and work lawfully in the United States until they become residents through the
2 normal family-based immigration system.

3 **Further information.** Do not contact the Court for information. For further information
4 and forms, go to the web site of class counsel, www.centerforhumanrights.org and
5 www.ghp-law.net Forms and information are also available on the U.S. Citizenship and
Immigration Service's web site, www.uscis.gov/graphics/index.htm.

6 *After you have read these information sheets, and reviewed the web pages of class counsel, you*
7 *may also contact the lawyers representing the class:*

8 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
9 256 S. Occidental Blvd.,
10 Los Angeles, CA 90057
11 (213) 388-8693, exts. 104 or 109
E-mail: amnestycoordinator@centerforhumanrights.org

12 GIBBS, HOUSTON PAUW
13 1000 Second Ave., Suite 1600,
14 Seattle, WA 98104
15 (800) 654-9155
E-mail: info@ghp-law.net.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT,) Case No. 88-379R
ET AL.,)
Plaintiffs,) CLASS MEMBER WORKSHEET
vs.)
U.S. CITIZENSHIP AND IMMIGRATION)
SERVICES, ET AL.,)
Defendants.)
_____)

///

NWIRP Class Member Worksheet

Last Name	First Name	Middle Initial	A Number
_____	_____	_____	_____
Date of Birth _____			

Please complete this Class Member Worksheet if you wish to apply for class member benefits pursuant to the settlement in *NWIRP v. U.S. Citizenship and Immigration Services ("IAP/NWIRP")*. In order to apply, answer every question on this Class Member Worksheet and staple it, with any attachments, to the top of the appropriate documents.

I am filing this Worksheet because:

a) I have previously filed for legalization, and

1. Check here: I wish to notify USCIS that I meet the NWIRP class definition and my application for legalization on Form I-687 or Form I-485 (LIFE Act) is still pending. If this applies to you, you do not need to complete the rest of this Worksheet, but merely sign the bottom of the form and mail it to

NWIRP WORKSHEET

USCIS

NATIONAL BENEFITS CENTER

P.O. Box 9001

Lee's Summit, MO 64002-9001

, OR

2. Check here: I wish to notify USCIS that my application for legalization on Form I-687 or Form I-485 (LIFE Legalization) was denied because INS/USCIS asserted that I failed to prove that my lawful nonimmigrant status expired or was unlawful prior to January 1, 1982, or that my unlawful residence after January 1, 1982 was not continuous, and I request that the application be reopened. If this applies to you, you do not need to complete the rest of this Worksheet, but merely sign the bottom of this form and send it with a completed Form I-290B and filing fee to

USCIS

P.O. Box 805876

Chicago, IL 60680-4120

, OR

1 b) Check here: I attempted to file during the legalization application period,
 2 May 5, 1987 to May 4, 1988 and the application was rejected, and I now wish to file as I
 3 qualify for class membership as described below. If this applies to you, you need to
 4 complete the rest of the worksheet, and submit it with a completed Form I-687 and filing
 5 fee with to

6 USCIS

7 P.O. Box 805876

8 Chicago, IL 60680-4120

9
 10 **Important:** USCIS will accept your I-687 application and Class Member Worksheet for
 11 filing so long as the following requirements are met:

- 12 The boxes checked on my Parts I, II and III below establish that I am a
 13 *IAP/NWIRP* class member, as explained in the instructions.
- 14 I have *signed* my Class Member Worksheet.
- 15 I have attached evidence available to me about my entry prior to January 1,
 16 1982, with a non-immigrant visa as described in the Instructions to this
 17 Worksheet.
- 18 I have *signed* my Form I-687 legalization application
- 19 I have included a money order or personal check for the current I-687 filing
 20 fee .
- 21 I have included a money order or personal check for the current biometrics
 22 fee

23 If your application and Worksheet does not meet the above requirements, *CIS may reject*
 24 *it and return it to you within 30 days of receipt.* If the application is rejected and
 25 returned to you as incomplete, you must correct the deficiency and re-file your
 26 application, and do so BEFORE the *IAP/NWIRP* class member filing period ends. *Rejected*
 27 *applications re-submitted after the close of the filing period will not be accepted. It is very*
 28 *important that you properly submit a complete application within the filing deadline.*

I General requirements

A	I entered the United States before January 1, 1982 on a	Yes	No
	nonimmigrant visa, and then resided in continuous	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

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unlawful status, except for brief absences, from before 1982 until the date I (or my parent or spouse) was turned away by the INS when I (or my parent or spouse) tried to apply for legalization in 1987-88.

B I was continuously physically present in the United States, except for brief, casual and innocent departures from November 6, 1986 until the date I (or my parent or spouse) was turned away by the INS when I (or my parent or spouse) tried to apply for legalization.

Yes No

C I have *not* been convicted in the United States of one felony or three or more misdemeanors, nor have I ever been convicted of crimes, or committed acts which make me inadmissible pursuant to any provision of the Immigration and Nationality Act, including but not limited to:
212(a)(2)(A)(i)(I) (crime involving moral turpitude);
212(a)(2)(B) (multiple criminal convictions);
212(a)(2)(C)(controlled substance traffickers);
212(a)(2)(A)(i)(II) (controlled substances) ,[other than less than 30 gr. marijuana]; 212(a)(3) (security and related grounds).

Yes No

If you answered "yes" to IA, B and C, go on to the next section. If you answered "no" to any of these sections, stop. You are not eligible.

II IAP/NWIRP CLASS REQUIREMENTS

A I violated my nonimmigrant status prior to January 1, 1982 and the violation of status is evident based on a review of government files.

This category includes individuals who worked without authorization before January 1, 1982, and who have Social Security records, tax records, or other government records to show income relating to such unauthorized work in their name. It also includes individuals who failed to file annual and quarterly

Yes No

<p>1 address reports as required under § 265 of the 2 Immigration and Nationality Act before January 1, 1982.</p>	
<p>3</p> <p>4 B I entered the United States prior to January 1, 1982 as a 5 student (on "F" or "J" visa) or as a temporary worker 6 (on "H" or "L" visa), and I failed to maintain my status 7 until January 1, 1982.</p> <p>8 This category includes individuals who dropped out of 9 school, took less than a full course of study, or 10 transferred schools without advance INS authorization, 11 or who terminated their authorized employment, before 12 January 1, 1982.</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>
<p>12 C After January 1, 1982 I obtained reinstatement to 13 nonimmigrant status, or entry into the United States on 14 a nonimmigrant visa, or a change of nonimmigrant 15 status, or adjustment of status, or some other 16 immigration benefit that apparently put me in lawful 17 immigration status, even though I did not qualify for 18 such benefit.</p> <p>19 This category includes individuals who did not inform the INS that they had previously worked without authorization.</p>	<p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>

20 *If you answered "yes" to any one of these three questions, then go to the following section. If you*
21 *answered "no" to all of them, stop. You are not eligible.*

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III PRIOR FILING REQUIREMENT

A I (or my parent or spouse) visited an INS or QDE office with a complete application for legalization (Form I-687) and filing fee between May 5, 1987 and May 4, 1988, and the application and fee were rejected for filing by either the INS or the QDE.	Yes No <input type="checkbox"/> <input type="checkbox"/>
B I (or my parent or spouse) visited an INS or QDE office in an attempt to apply for legalization between May 5, 1987 and May 4, 1988, and was refused application forms or was turned away by either the INS or QDE officer.	Yes No <input type="checkbox"/> <input type="checkbox"/>

If you answered "yes" to IIIA or III B, then go to the following section. If you answered "no" to both, stop. You are not eligible.

IV CERTIFICATION

I certify under the penalty of perjury under the laws of the United States of America that the above statements and the evidence submitted herewith are true and correct. I authorize the release of any information from my records that the Department of Homeland Security needs to verify the foregoing.

I understand that information I provide in connection with this Claim, or the related applications I-687, I-765, I-131, or G-639 is confidential and may not be used to arrest or deport me or for any purpose unrelated to the adjudication of this Claim except as provided in 8 U.S.C. § 1255a(c)(5).

Date: _____

Signature

Current Address:

1
2 UNITED STATES DISTRICT COURT
3
4 WESTERN DISTRICT OF WASHINGTON
5
6 AT SEATTLE

7 NORTHWEST IMMIGRANT RIGHTS PROJECT,) Case No. 88-379R
8 ET AL.,)
9 Plaintiffs,) APPEAL TO SPECIAL MASTER FROM DENIAL
10 vs.) OF CLASS MEMBERSHIP
11 U.S. CITIZENSHIP AND IMMIGRATION) Exhibit 3
12 SERVICES, ET AL.,)
13 Defendants.)
14 _____)

15 **Instructions**

16 Use this form if you wish to appeal a final denial of class membership. Appeals will be
17 decided by an *IAP/NWIRP* Special Master.

18 Do not use this form if you have only received a Notice of Intent to Deny your class
19 membership application.

20 Mail this form, along with a copy of your Class Membership Application and the final
21 denial of your Class Member Worksheet, to *IAP/NWIRP* Special Master, c/o Center for
22 Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057.
23 With this appeal form you must enclose a check or money order in the amount of \$125
24 made payable to "*IAP/NWIRP* Special Master."

25 If you do not have a copy of your Class Member Worksheet, mail this form, your final
26 denial, and your check or money order to the Special Master at the address listed above.
27 The Special Master will obtain a copy of your Class Membership Worksheet.

28 Copy: Be sure to keep a copy of everything that you mail to the *NWIRP* Special
Master.

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Complete the information requested below.

Name _____

Address _____

City _____ State _____ Zip _____

Telephone () _____ INS A number (if any) _____

1) Do you have and have you attached a copy of your Class Member Worksheet? Yes // No //

2) You must attach a copy of the *denial* of your NWIRP Class Member Worksheet. Have you attached a copy? Yes // No //

3) You must attach a check or money order payable to IAP/NWIRP Special Master in the amount of \$125. Have you attached a check or money order as required? Yes // No //

4) Explain why you believe your Class Member Worksheet was incorrectly denied. You are not required to fill in this section, but may do so if you wish. You may attach a separate sheet of paper with you explanation if it is too long to fit on this page.

(Please use additional sheets of paper if you need more space to explain your complaint)

Dated: _____

Signature

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS)	Case No. 88-379R
PROJECT, ET AL.)	
PLAINTIFFS,)	[PROPOSED] ORDER OF
vs.)	FINAL JUDGMENT
U.S. CITIZENSHIP AND IMMIGRATION)	(Exhibit 5)
SERVICES, ET AL.)	
DEFENDANTS.)	
_____)	
)	

///

1 Rule 23(e) of the Federal Rules of Civil Procedure provides:

2 A class action shall not be dismissed or compromised without the approval of the
3 court, and notice of the proposed dismissal or compromise shall be given to all
4 members of the class in such manner as the court directs.

5 With respect to the merits of the settlement, Rule 23(e) requires the Court to
6 determine whether a proposed settlement in a class action is fundamentally fair,
7 adequate, and reasonable. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.
8 1992). It is the settlement taken as a whole, rather than the individual component parts,
9 that must be examined for overall fairness. Officers for Justice v. Civil Serv. Comm'n of San
10 Francisco, 688 F.2d 615, 628 (9th Cir. 1982). The decision to approve or reject a settlement
11 is committed to the sound discretion of the trial judge because he is "exposed to the
12 litigants, and their strategies, positions and proof." Officers for Justice, 688 F.2d at 626
13 (internal quotation omitted).
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17 For the reasons set out in the parties' Joint Statement re Final Approval of Settlement,
18 the Court finds that the settlement is fundamentally fair, adequate and reasonable.

19 Accordingly,

20
21 IT IS HEREBY ORDERED that the proposed settlement is approved, and each and
22 every claim of the Complaint, as amended, is dismissed with prejudice, and any
23 injunctive orders and decisions of this Court are dissolved.
24

25 IT IS FURTHER ORDERED that the settlement class be certified pursuant to Rule 23
26 of the Federal Rules of Civil Procedure as follows:
27
28

1 All persons who entered the United States in a non-immigrant status prior to
2 January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A
3 of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated
4 Categories described below in paragraph 2, and who —

- 5 A) between May 5, 1987 and May 4, 1988, attempted to file a complete
6 application for legalization under § 245A of the INA and fees to an INS
7 officer or agent acting on behalf of the INS, including a Qualified Designated
8 Agency (“QDE”), and whose applications were rejected for filing
9 (hereinafter referred to as “Sub-class A members”); or
- 10 B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization
11 with an INS officer, or agent acting on behalf of the INS, including a QDE,
12 under § 245A of the INA, but were advised that they were ineligible for
13 legalization, or were refused legalization application forms, and for whom
14 such information, or inability to obtain the required application forms, was a
15 substantial cause of their failure to file or complete a timely written
16 application (hereinafter referred to as “Sub-class B” members); or
- 17 C) filed a legalization application under INA § 245A and fees with an INS
18 officer or agent acting on behalf of the INS, including a QDE, and whose
19 application
- 20 i. has not been finally adjudicated or whose temporary resident
21 status has been proposed for termination (hereinafter referred to
22 as “Sub-class C.i. members”),
 - 23 ii. was denied or whose temporary resident status was terminated,
24 where the INS or CIS action or inaction was because INS or CIS
25 believed the applicant had failed to meet the “known to the
26 government” requirement, or the requirement that s/he demonstrate
27 that his/her unlawful residence was continuous (hereinafter referred
28 to as “Sub-class C.ii. members”).

1 **2. Enumerated Categories**

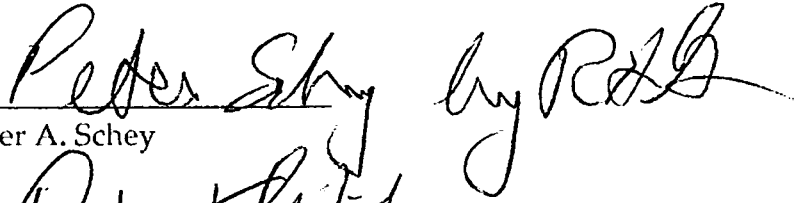
- 2 (1) Persons who violated the terms of their nonimmigrant status prior to
3 January 1, 1982 in a manner known to the government because
4 documentation or the absence thereof (including, but not limited to, the
5 absence of quarterly or annual address reports required on or before
6 December 31, 1981) existed in the records of one or more government
7 agencies which, taken as a whole, warrants a finding that the applicant was
8 in an unlawful status prior to January 1, 1982 in a manner known to the
9 government.
- 10 (2) Persons who violated the terms of their nonimmigrant visas before January
11 1, 1982, for whom INS/DHS records for the relevant period (including
12 required school and employer reports of status violations) are not contained
13 in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R.
14 §§ 245a.1(d) and 245a.2(d) without such records.
- 15 (3) Persons whose facially valid "lawful status" on or after January 1, 1982 was
16 obtained by fraud or mistake, whether such "lawful status" was the result of
17 (a) reinstatement to nonimmigrant status;
18 (b) change of nonimmigrant status pursuant to INA § 248;
19 (c) adjustment of status pursuant to INA § 245; or
20 (d) grant of some other immigration benefit deemed to interrupt the
21 continuous unlawful residence or continuous physical presence
22 requirements of INA § 245A.

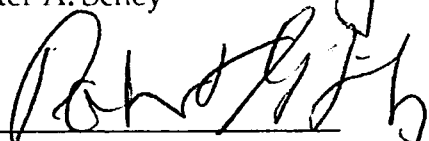
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25 Dated: _____, 2008

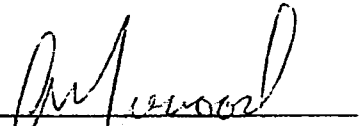
Honorable James L Robart
United States District Judge

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28 Presented by:
Settlement

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Peter A. Schey


Robert Gibbs
Attorneys for Plaintiffs


Anthony Norwood
U.S. Department of Justice
Office of Immigration Litigation

Attorneys for Defendants

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS)
PROJECT, et al.,)

Plaintiffs,)

v.)

UNITED STATES CITIZENSHIP AND)
IMMIGRATION SERVICES, et al.,)

Defendants)

NO. C88-379R

STIPULATION AND ORDER
OF PROTECTION
REGARDING PRIVACY ACT
INFORMATION AND
INFORMATION COVERED BY 8
U.S.C. § 1255a(c)(5)

1 Plaintiffs, by and through their attorneys, and Defendants, by and through their
2 attorneys, stipulate and agree to the following:

3 1. This Stipulation and Order is agreed to and entered pursuant to Fed. R. Civ. P.
4 26(c), which provides for the issuance of protective orders limiting the disclosure of
5 privileged and confidential documents and information in appropriate circumstances, and
6 5 U.S.C. § 552a(b)(11) and (g)(1), which provide an exception to the Privacy Act of 1974
7 for documents and information released pursuant to a court order.

8 2. This Stipulation and Order relates to a class action brought pursuant to Section
9 245A of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1255a (legalization
10 applications); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201 (the
11 Declaratory Judgment Act); and 5 U.S.C. § 701 (the Administrative Procedures Act).
12 The class action challenges Defendants’ procedures for the adjudication of INA §245A
13 legalization applications.

14 3. The parties have entered into a Settlement Agreement dated [DATE TO BE
15 SUPPLIED], which contemplates the disclosure of documents and information that may
16 be protected from release by the Privacy Act of 1974, 5 U.S.C. § 552(a) and/or by 8
17 U.S.C. § 1255a(c)(5). Specifically, the Settlement Agreement provides that United States
18 Citizenship and Immigration Services (“USCIS”) will provide class counsel with
19 identifying information on legalization applicants that fall within the class, i.e. name, date
20 and place of birth, last known mailing address, SSN, counsel name and contact
21 information and all other available identifying information. It also provides that

1 Defendants shall provide copies to Plaintiffs' counsel of all denials of legalization, and
2 for Defendants to provide periodic reports to class counsel concerning notice to class
3 members and adjudication of their legalization applications.

4 4. While disclosure of such information ordinarily is prohibited in civil
5 litigation, the Privacy Act provides, as an exception, that such records may be released
6 "pursuant to the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). An
7 order of this Court, therefore, would provide a basis for release of the requested
8 information pursuant to the Privacy Act and Fed. R. Civ. Pro. 26(c), as well as insulate
9 Defendants from potential liability for improper disclosure. See 5 U.S.C. § 552a(g)(1)..

10 5. While 8 U.S.C. § 1255A(c)(5) ordinarily limits the disclosure of information
11 furnished by an applicant in a legalization application, an order of this court would provide a
12 basis for release of the requested information and insulate Defendants from potential liability for
13 improper disclosure. See Zambrano v. INS, 972 F.2d 1122 (9th Cir. 1992), vacated on other
14 grounds, 509 U.S. 918 (1993).

15 6. The purposes of this Stipulation and Order include protecting the
16 confidentiality of certain information while ensuring that the parties are able to quickly
17 and accurately identify and contact potential class members and provide them the relief
18 they may be entitled to under the Settlement Agreement, as well as to monitor
19 compliance with the Settlement Agreement. Accordingly, the parties, subject to the
20 Court's approval, stipulate and agree that the procedures set out in the ensuing paragraphs

1 shall be followed with respect to information provided by Defendants pursuant to the
2 Settlement Agreement and this Stipulation and Order.

3 6. All information provided pursuant to the Settlement Agreement and this
4 Stipulation and Order shall be used solely in connection with this lawsuit. No
5 information may be released or disclosed to any person other than:

- 6 a. the potential class member the information relates to or Class
7 Counsel in this action, or other counsel or representative of
8 the class member;
- 9 b. secretaries, paralegal assistants, and other employees and
10 agents of Class Counsel who are engaged in assisting Class
11 Counsel in the preparation of this action;
- 12 c. outside consultants and experts consulted or retained for the
13 purpose of assisting in the preparation of this action, upon
14 condition that, before making disclosure, Class Counsel must
15 obtain and retain an agreement in writing from the outside
16 expert or consultant reciting that he or she has read a copy of
17 this Stipulation and Order and agrees to be bound by its
18 provisions; and
- 19 d. any other person mutually authorized by all counsel to
20 examine such information and materials.


21
22 7. Any person having access to the information disclosed by Defendants
23 pursuant to the Settlement Agreement and this Stipulation and Order, such as paralegals
24 or other staff or agents of Plaintiffs' counsel, shall be informed that the information is
25 confidential and subject to a non-disclosure Order of the Court. No such person shall
26 release or disclose the information to any person other than those specifically identified
27 in paragraph 6, above, without further order of the Court or stipulation of the parties.

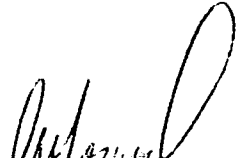
28 8. If Class Counsel intends to file any motion, opposition, reply or any other
29 filing with the Court and attach thereto or set forth therein any document or information

1 that Defendants have provided pursuant to the Settlement Agreement or this Stipulation
2 and Order, Class Counsel shall file the document under seal or redact identifying
3 information.

4 9. Within sixty days following the termination of jurisdiction pursuant to the
5 Settlement Agreement, any originals or reproductions of any the information provided by
6 Defendants under the Settlement Agreement and this Stipulation and Order shall be
7 destroyed by Class Counsel or returned to the custody of counsel for the Defendants. If
8 the documents are destroyed, Class Counsel shall so notify Defendants' counsel in
9 writing.

10 10. Any specific part or parts of the restrictions imposed by this Stipulation and
11 Order may be terminated at any time by a letter from counsel for Defendants to Class
12 Counsel or by an order of the Court.

13
14 
15
16 /s/ Robert H. Gibbs
17 ROBERT H. GIBBS
18 1000 Second Avenue, Suite 1600
19 Seattle, WA 98104
20 206-224-8790
21 Counsel for Plaintiffs
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15
16 /s/ Anthony Norwood
17 ANTHONY NORWOOD
18 Office of Immigration Litigation
19 Box 878
20 Washington, DC 20044
21 Counsel for Defendants
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2 The parties having stipulated, it is hereby **ORDERED** as follows:

3 1. Notwithstanding any other provision of the Privacy Act, 5 U.S.C. § 552a, et
4 seq., United States Citizenship and Immigration Services (“USCIS”), its officers, agents,
5 employees and representatives (including, but not limited to, the United States Attorney’s
6 Office for the Western District of Washington) are hereby authorized under 5 U.S.C. §
7 552a(b)(11) to release to Class Counsel the information identified herein.

8 2. Notwithstanding any provision of 8 U.S.C § 1255A(c)(5), USCIS, its
9 officers, agents, employees and representatives (including, but not limited to, the United
10 States Attorney’s Office for the Western District of Washington) are hereby authorized to
11 release to Class Counsel the information identified herein.

12 3. Class Counsel shall utilize such information only for the purpose of
13 locating potential class members in order to notify them of their rights under the
14 Settlement Agreement, and to monitor compliance with the Settlement Agreement, and
15 shall make no further disclosure of such information beyond what is necessary to
16 accomplish these purposes.

17 4. The USCIS, its officers, agents, employees and representatives are hereby
18 relieved of any obligation under 5 U.S.C. § 552a(c) to make or keep any accounting of
19 any disclosure or, under 5 U.S.C. § 552a(e)(8), to provide notice of any disclosure to any
20 individual, made under the authority of this order.

21 5. The purpose of this order is to enable the USCIS its officers, agents,
22 employees and representatives to provide information which they might otherwise be

1 prohibited from disclosing under the Privacy Act, 5 U.S.C. § 552a and/or 8 U.S.C. §
2 1255a(c)(5). However, it is understood and agreed that this order does not constitute an
3 agreement or a ruling that any particular evidence is discoverable, relevant or admissible
4 in this matter, nor, except in so far as may be necessary to ensure that any disclosure does
5 not violate an provision of 8 U.S.C. § 1255a(c)(5), may this order be construed to compel
6 any action on the part of the USCIS or any of its officers, agents, employees or
7 representatives.

8
9 DATED this _____ day of _____, 2008.

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16 JAMES ROBART
17 United States District Judge
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