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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**

5 AUDLEY BARRINGTON LYON, JR., JOSÉ ) Case No. 3:13-cv-05878-EMC  
6 ELIZANDRO ASTORGA-CERVANTES, and)  
7 NANCY NERIA-GARCIA , on behalf of )  
8 themselves and all others similarly situated, )

9 *Plaintiffs,* )

10 v. )

11 UNITED STATES IMMIGRATION AND )  
12 CUSTOMS ENFORCEMENT; SARAH )  
13 SALDAÑA, Director of U.S. Immigration and )  
14 Customs Enforcement; UNITED STATES )  
15 DEPARTMENT OF HOMELAND )  
16 SECURITY; JEH JOHNSON, Secretary of )  
17 Homeland Security; and ADRIAN MACIAS, )  
18 Acting Director of the San Francisco Field )  
19 Office of U.S. Immigration and Customs )  
20 Enforcement.<sup>1</sup> )

21 *Defendants.* )

22 **SETTLEMENT AGREEMENT AND RELEASE**

23 Plaintiffs in the above-captioned matter, on behalf of themselves and all Class Members, and  
24 Defendants U.S. Immigration and Customs Enforcement (“ICE”); Sarah Saldaña, in her official  
25 capacity as Director of U.S. Immigration and Customs Enforcement; United States Department  
26 of Homeland Security; Jeh Johnson, in his official capacity as Secretary of Homeland Security;  
27 and Adrian Macias, in his official capacity as Acting Director of the San Francisco Field Office  
28 of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; by and

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<sup>1</sup> Sarah Saldaña, Director, ICE, is substituted under Federal Rule of Civil Procedure 25(d) for Acting Director John Sandweg, who was originally named as an official-capacity Defendant in this Action. Adrian Macias, Acting Field Office Director, is substituted under Federal Rule of Civil Procedure 25(d) for former Field Office Director Timothy Aitken, who was originally named as an official-capacity Defendant in this Action.

1 through their attorneys, hereby enter into this Settlement Agreement and Release (“Agreement”),  
2 as of the date it is executed by all parties hereto (the “Agreement Date”) and effective upon  
3 approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure as set forth  
4 below.

4 WHEREAS:

- 5
- 6 A. On December 19, 2013, Plaintiffs commenced a civil action against Defendants on behalf  
7 of themselves and all others similarly situated, captioned *Lyon et al. v. U.S. Immigration*  
8 *and Customs Enforcement, et al.*, United States District Court for the Northern District of  
9 California Case No. 3:13-cv-05878-EMC (the “Action”) and sought class certification,  
10 designation of Class Counsel, and declaratory and injunctive relief.
- 11 B. On April 16, 2014, the United States District Court for the Northern District of California  
12 (the “Court”) certified the proposed class under Federal Rule of Civil Procedure 23(b)(2).  
13 The Court defined the certified class as: “All current and future immigration detainees  
14 who are or will be held by ICE in Contra Costa, Sacramento, and Yuba Counties.”
- 15 C. Plaintiffs moved to amend the class certification order and class definition on June 11,  
16 2015, and the Court granted Plaintiffs’ motion and modified the definition of the certified  
17 class on July 27, 2015. The Court endorsed the modified class definition pleaded in  
18 Plaintiffs’ Supplemental Complaint: “All current and future adult immigration detainees  
19 who are or will be held by ICE in Contra Costa County, Kern County, Sacramento  
20 County, or Yuba County.”
- 21 D. Defendants deny all liability with respect to the Action, deny that they have engaged in  
22 any wrongdoing, deny the allegations in the Complaint, deny that they committed any  
23 violation of law, deny that they acted improperly in any way, and deny liability of any  
24 kind to the Plaintiffs or Class Members, but have agreed to the settlement and dismissal  
25 of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience,  
26 and distraction of further protracted litigation, including trial and appeal; and (ii) finally  
27 put to rest and terminate the Action and any and all Settled Claims as defined in Section  
28 I.G.
- E. Both Plaintiffs and Defendants, through counsel, have conducted discussions and arm’s  
length negotiations regarding a compromise and settlement of the Action with a view to  
settling all matters in dispute.

1 F. Considering the benefits that the Plaintiffs and Class Members will receive from  
2 settlement of the Action and the risks of litigation, Class Counsel have concluded that the  
3 terms and conditions of this Agreement are fair, reasonable, and in the best interests of  
4 the Plaintiffs and Class Members; Plaintiffs have agreed that Defendants shall be released  
5 from the Settled Claims pursuant to the terms and provisions of this Agreement; and have  
6 agreed to the dismissal with prejudice of this Action and all Settled Claims as defined in  
7 Section I.G.

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

14 **I. DEFINITIONS:**

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

- 16 A. “Action” means the civil action captioned *Lyon et al. v. U.S. Immigration and*  
17 *Customs Enforcement, et al.*, Case No. 3:13-cv-05878-EMC, United States District  
18 Court for the Northern District of California.
- 19 B. “Effective Date of Settlement” or “Effective Date” means the date upon which this  
20 Agreement shall become effective, as set forth in Section VIII, below.
- 21 C. “Plaintiffs” means Audley Barrington Lyon, Jr., José Elizandro Astorga-Cervantes,  
22 and Nancy Neria-Garcia.
- 23 D. “Class Member(s)” means any current or future adult immigration detainee who,  
24 during the period of this Agreement, is or will be held by ICE in Contra Costa  
25 County, Kern County, Sacramento County, or Yuba County.
- 26 E. “Plaintiffs’ Counsel” or “Class Counsel” means Julia Harumi Mass, Angélica  
27 Salceda, Christine Sun, and Michael Risher of the American Civil Liberties Union  
28 (“ACLU”) of Northern California; Carl Takei of the ACLU National Prison  
Project; Robert Varian, Charles Ha, and Alexis Yee-Garcia of Orrick, Herrington &  
Sutcliffe LLP; and Megan Sallomi and Marc Van Der Hout of Van Der Hout,  
Brigagliano & Nightingale, LLP. Should these entities change their names or  
merge with other entities, those new entities shall also qualify as Class Counsel.

- 1 F. “Defendants” means United States Immigration and Customs Enforcement  
2 (“ICE”); Sara Saldaña, in her official capacity as Director of ICE; United States  
3 Department of Homeland Security; Jeh Johnson, in his official capacity as  
4 Secretary of Homeland Security; and Adrian Macias, in his official capacity as  
5 Director of the San Francisco Field Office of ICE, their predecessors and  
6 successors, their departments and agencies, and their past or present agents,  
7 employees, and contractors.
- 8 G. “Settled Claims” means all claims for declaratory or injunctive relief that were  
9 brought on behalf of Class Members based on the facts and circumstances alleged  
10 in the Complaint and First Supplemental Complaint including but not limited to  
11 claims that the telephone access afforded Class Members while in ICE custody  
12 violated Class Members’ statutory rights and privileges under the Immigration and  
13 Nationality Act, 8 U.S.C. § 1101 *et seq.*, including access to counsel and their right  
14 to present evidence in certain immigration proceedings; their rights to due process  
15 under the Fifth Amendment to the U.S. Constitution; and their rights to petition the  
16 government for redress of grievances under the First Amendment to the U.S.  
17 Constitution.
- 18 H. “Settlement” means the settlement provided for in this Agreement.
- 19 I. “Contra Costa” means West County Detention Facility in Contra Costa County,  
20 California.
- 21 J. “Yuba” means Yuba County Jail in Yuba County, California.
- 22 K. “RCCC” means Rio Cosumnes Correctional Center in Sacramento County,  
23 California.
- 24 L. “Mesa Verde” means Mesa Verde Detention Facility in Kern County, California.
- 25 M. “Facilities” means Contra Costa, Yuba, RCCC, and Mesa Verde.
- 26 N. “Housing Unit Phones” means the telephones located in or near housing units at the  
27 Facilities that Class Members may utilize for both Legal Calls and other telephone  
28 calls.
- O. “Phone Rooms” means the telephone-equipped enclosed rooms at Yuba, Contra  
Costa, and Mesa Verde and the enclosed space ICE will add at RCCC to provide  
free, direct, and non-monitored telephones for the Plaintiff Class.
- P. “Legal Calls” means calls to attorneys and calls to third parties to facilitate the  
gathering of evidence and obtaining legal advice and representation related to the  
class member’s immigration case. Such third parties include but are not limited to:  
government agencies, courts, employers, businesses, organizations, and friends and

1 family members who may be testifying as witnesses, writing letters of support,  
2 and/or assisting the class member to find an attorney or obtain evidence.

- 3 Q. "Attorney Legal Call" means a Legal Call to an attorney regarding prospective,  
4 current, or past representation or for legal consultation. An Attorney Legal Call  
5 shall not require the attorney to have a G-28 on file for the detainee.
- 6 R. "Non-Attorney Legal Call" means any Legal Call other than an Attorney Legal  
7 Call.
- 8 S. "Positive Acceptance" means the requirement that for a telephone call to connect,  
9 the recipient must listen to a recorded message and take an affirmative step,  
10 typically pressing a particular key, to accept the call.
- 11 T. "Attorneys Performing Pro Bono Work" means any attorney who performs pro  
12 bono work as a part of their practice, and not just attorneys who exclusively  
13 perform pro bono work.
- 14 U. "Government Agencies and Offices" means federal, state, or local governmental  
15 agencies and offices that may facilitate the gathering of evidence for immigration-  
16 related proceedings and includes the following types of entities: California state  
17 courts, U.S. District Courts in California, the Ninth Circuit Court of Appeals,  
18 Federal and State Public Defender offices in California, major California Police,  
19 Sheriff, District Attorney, and Probation Departments, and northern California  
20 rehabilitation programs.
- 21 V. "Indigent Class Members" means Class Members who have had \$15 or less on  
22 their commissary accounts for the previous ten days.
- 23 W. "Lockdown" means a restriction to cells or bunks during waking hours in response  
24 to a specific security incident; it does not include routine "free time" limitations at  
25 Contra Costa.
- 26 X. "Free Call" and "Free Calling" mean calls and calling where the call takes place at  
27 no cost to the caller and the recipient.
- 28 Y. "ICE DTS Provider Pro Bono Platform" means the Pro Bono Platform provided by  
ICE's Detainee Telephone Service ("DTS") Provider pursuant to a contract  
between ICE and the ICE DTS Provider. The current ICE DTS Provider is Talton  
Communications, Inc.

## II. **RELEASE: SCOPE AND EFFECT OF RELEASE**

- A. As of the Effective Date, the Plaintiffs and the Class Members, on behalf of  
themselves, their heirs, executors, administrators, representatives, attorneys,  
successors, assigns, agents, affiliates, and partners, and any persons they represent,

1 by operation of any final judgment entered by the Court, fully, finally, and forever  
2 release, relinquish, and discharge the Defendants of and from any and all of the  
3 Settled Claims. The foregoing release includes all claims for injunctive or  
4 declaratory relief, whether known or unknown, that could have been brought on  
5 behalf of Class Members at any time prior to the Effective Date. This Release shall  
6 not apply to claims that arise or accrue after the termination of this Agreement.

- 7
- 8 B. Defendants agree and acknowledge that this Agreement, and specifically this  
9 release, shall not impact any individual Class Member's (other than the named  
10 Plaintiffs') ability to bring a claim for monetary damages in his or her individual  
11 capacity arising from or related to injury suffered as a result of limitations or denial  
12 of telephone access while in ICE custody. Defendants also agree and acknowledge  
13 that this Agreement, and specifically this release, shall not impact any individual  
14 Class Member's (other than the named Plaintiffs') ability to argue (whether on a  
15 Petition for Review, motion to reopen, or other appeal, application, request for  
16 review of petition to modify such class member's order of removal or other  
17 immigration order) that limitations on telephone access in ICE custody affected  
18 such individual Class Member's immigration proceedings.

### 19 **III. TELEPHONE ACCESS IN THE FACILITIES**

#### 20 **A. Adding Free and Private Numbers to Housing Unit Phones**

- 21
- 22 1. At Contra Costa, Yuba, and RCCC, the telephone numbers for certain  
23 Government Agencies and Offices and Attorneys Performing Pro Bono Work  
24 (as further identified in Paragraphs A.4 and A.5 below) shall be added to Free  
25 Call telephone platforms that enable Class Members to make Free Calls to  
26 these numbers from Housing Unit Phones without Positive Acceptance and  
27 without being recorded or monitored.
- 28 2. At Mesa Verde, the telephone numbers for certain Government Agencies and  
Offices and Attorneys Performing Pro Bono Work (as further identified in  
Paragraphs A.4 and A.5 below) shall be added to a database of telephone  
numbers that shall connect from the Mesa Verde Housing Unit Phones  
without Positive Acceptance and without being recorded or monitored. If  
technologically feasible, such numbers will also be Free Calls from the Mesa  
Verde Housing Unit Phones.
3. In addition to the Free Call platforms described in paragraphs A.1 and A.2,  
each of the Facilities shall enable Housing Unit Phones to make paid calls to  
attorney telephone numbers without Positive Acceptance and without being  
recorded or monitored. The attorney numbers shall be identified through the  
process described in paragraphs A.5, 6, 7 and 8.

- 1 4. Plaintiffs shall provide lists of Government Agencies and Offices and  
2 Defendants shall ensure their inclusion on the Free Call platforms and  
3 database described in paragraphs A.1 and 2 above. Plaintiffs shall specify no  
4 more than 10 rehabilitation centers for inclusion on each Facility's platform or  
5 database.
- 6 5. Attorneys may request that their phone numbers be added to the platforms and  
7 databases described in Paragraphs A.1, A.2, or A.3 by emailing the number  
8 and specific request to an email drop box to be provided by ICE. If an attorney  
9 requests to be added to the Free Call platforms, the attorney's telephone  
10 number shall be added to the platforms described in A.1 and A.2 if s/he is an  
11 Attorney Performing Pro Bono Work. If an attorney requests to be added to  
12 the no-Positive-Acceptance databases, the attorney's telephone number shall  
13 be added to the databases described in A.3 regardless of whether s/he is an  
14 Attorney Performing Pro Bono Work.
- 15 6. Attorneys may request that their phone numbers be removed from the  
16 platforms and databases described in Paragraphs A.1, A.2, or A.3 by emailing  
17 the specific request to the same email drop box to be provided by ICE.
- 18 7. The parties will work together to develop a notice to immigration attorneys  
19 practicing in the San Francisco Immigration Court to allow them to be added  
20 to the Free Call platforms and/or database of numbers not subject to Positive  
21 Acceptance and recording and/or monitoring. Class Counsel will reach out to  
22 organizations including American Immigration Lawyers Association, National  
23 Lawyers Guild, and/or Federal Bar Association to request use of their email  
24 listservs for this purpose
- 25 8. Class Members may submit attorney names and telephone numbers to ICE for  
26 addition to the platforms and databases described in paragraphs A.1, 2, and 3.  
27 If the attorney identified by the Class Member confirms that s/he wishes to be  
28 added, ICE shall add the attorney's telephone number to the platforms and  
databases described in paragraph A.1 and A.2 (provided the attorney accepts  
some pro bono immigration cases), or to the database described in paragraph  
A.3
9. Platforms and databases described in A.1, A.2, and A.3 shall be updated  
regularly, and no less than once a week, in response to requests under  
paragraphs A.5, 6, 7, and 8.
10. Platforms and databases described in A.1, 2, and 3 shall be able to connect to  
the telephone numbers for attorneys, Government Agencies and Offices  
regardless of whether the numbers are toll-free or regular area code numbers.

1 B. Extending and Eliminating Automatic Cut-Offs

- 2 1. ICE shall ensure that at Yuba and RCCC, Housing Unit Phone automatic cut-
- 3 offs are extended to 40 minutes.
- 4 2. ICE shall extend the automatic cut-off of the ICE DTS Provider Pro Bono
- 5 Platform calls to 60 minutes.
- 6 3. ICE shall ensure that the automatic cut-off of 20 minutes in the Yuba Phone
- 7 Room is eliminated.
- 8 4. ICE reserves the right to impose time limits to facilitate equitable access based
- 9 on demonstrated need in individual circumstances. Such time limits shall not
- 10 be shorter than 20 minutes per call.

11 C. Installing Phone Booths in Housing Units

- 12 1. Subject to Paragraphs C.2 and C.3, ICE shall install phone booths in the
- 13 common areas of the housing units where ICE detainees are held at each
- 14 facility. Where a housing unit has no common area, a phone booth will be
- 15 installed for Class Member use in a conveniently accessible location. A
- 16 rendering of the specifications and measurements of the type of proposed
- 17 phone booths is included as Exhibit A to this Agreement.
- 18 2. The phone booths shall provide sufficient privacy so that Legal Calls cannot
- 19 be overheard by officers, facility staff, or other detainees. This privacy shall
- 20 be afforded primarily by the physical characteristics of the booths and
- 21 augmented by their placement within the housing units.
- 22 3. The ability of other detainees or staff to overhear muffled sounds without
- 23 sufficient clarity to discern the caller's words or language does not render the
- 24 call capable of being "overheard" for purposes of this Agreement.
- 25 4. ICE shall provide 40 phone booths, distributed as needed to provide equitable
- 26 access to Class Members in each Facility.
- 27 5. ICE shall instruct the Facilities that, in periods of high demand, Class
- 28 Members should have priority for use of the phone booths.
- 29 6. Class members shall be permitted to access the phone booths at any time
- 30 during each individual Facility's waking hours (other than during count or
- 31 lockdowns), subject to the provisions in the "Physical Access to the Housing
- 32 Unit Phones" section, below.

33 D. Physical Access to Housing Unit Phones

- 34 1. Access to housing unit phones, including phone booths, shall be during
- 35 waking hours (other than during count or lockdowns), which is anytime other
- 36 than "lights out" at all four Facilities.
- 37 2. Class Members who want to use a phone booth but who are housed in areas
- 38 where they are unable to access a phone booth without staff intervention



1 (including but not limited to segregation, subject to paragraph D.3 below)  
2 shall receive access to a phone booth (or other private area, as appropriate)  
3 within two waking hours of making a request. If the request is made at or  
4 before 3:00 p.m., the Class Member shall receive access to a phone booth or  
5 other private area within business hours on the day of the request. Further  
6 delays may be justified by a lockdown of unusual length or other  
7 extraordinary circumstances, but shall in all cases be documented and reported  
8 to ICE. Each Facility shall establish a process for such class members to  
9 notify the facilitator as needed to assist with calls. In some instances, the  
10 housing unit officer will contact the facilitator rather than having the Class  
11 Member directly contact the facilitator.

- 12
- 13 3. The above requirements apply fully to Class Members in segregation for  
14 administrative reasons. However, if a Class Member is in segregation for  
15 disciplinary reasons and restrictions have been properly imposed on that Class  
16 Member's general telephone calling privileges as part of the disciplinary  
17 process, the above requirements regarding access to phone booths or other  
18 private areas shall apply only to calls for personal or family emergencies,  
19 Legal Calls, or otherwise justified by a compelling need.

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E. Phone Rooms

1. ICE and the Facilities shall provide one or more Phone Rooms for Legal  
Calls, including both Attorney Legal Calls and Non-Attorney Legal Calls, at  
each Facility. A class member may request an Attorney Legal Call from the  
Phone Room without first utilizing the Housing Unit Phones for particularly  
sensitive or lengthy legal consultations. To make a Non-Attorney Legal Call  
from the Phone Room, however, Class Members must first try to contact the  
intended call recipient from the Housing Unit Phones and be unsuccessful.
2. With respect to RCCC, the Phone Room(s) provided may consist of an  
enclosed room or another enclosed space (which may be a phone booth with  
seating or another type of enclosed space located in the RCCC law library).  
This shall ensure that Class Members can make free, direct, unrecorded and  
unmonitored phone calls without being overhead by officers, other Facility  
staff, or other Class Members or inmates of the Facility.
3. To accommodate interim Legal Call access at Contra Costa, whose system  
currently will not allow the suspension of Positive Acceptance for paid calls  
from housing unit phones and phone booths, ICE shall provide additional  
Phone Room access. This requirement can be met by providing private  
telephones without Positive Acceptance, such as phone booths equipped with  
the same telephone systems as the telephones in the Phone Rooms either in

1 the housing units or elsewhere in the Facility, as long as access to those  
2 telephones complies with the other provisions of this section.

- 3
- 4 4. ICE shall ensure that Class Members can use at least one of the telephones in  
5 the Yuba Phone Room without being overheard by officers, other staff, or  
6 other detainees. Options include changing Yuba's policy to limit use of the  
7 Phone Room to one person at a time and installing a phone booth within the  
8 Phone Room for one or both of the existing phones. Yuba Phone Room  
9 phones shall not include a Positive Acceptance feature or automated outgoing  
10 message.
- 11 5. Requests for Legal Calls will ordinarily be accommodated within eight facility  
12 waking hours and shall be accommodated within 24 hours. Further delays may  
13 be justified by extraordinary circumstances, but shall in all cases be  
14 documented and reported to ICE.
- 15 6. Phone Room calls shall be scheduled for 30 minutes unless a detainee  
16 specifies on his/her request form that a longer call will be needed. Facilities  
17 shall accommodate requests for calls longer than 30 minutes. ICE reserves  
18 the right to impose time limits on Phone Rooms in periods of high demand to  
19 facilitate equal access for all detainees, consistent with the other terms of this  
20 Agreement. Such time limits shall not be shorter than 20 minutes per call.
- 21 7. Each Facility shall modify its current request form for Class Members to  
22 request access to Facility Phone Rooms as follows: The form shall include a  
23 statement that Phone Room calls will be limited to 30 minutes unless the  
24 Class Member indicates that a longer call is required, a space for class  
25 members to request a particular time for Phone Room access and to indicate if  
26 more than 30 minutes will be needed, and spaces for Class Members to  
27 provide the name of the individual, agency or organization the Class Member  
28 seeks to contact and the telephone number the Class Member wishes to call.
8. Attorneys may request to schedule a Legal Call in a Phone Room through the  
on-site facilitators at each Facility or other Facility staff. Such requests shall  
be granted within the same time limits that apply to Class Member requests  
for Phone Room access as set forth in Paragraph E.5 above. Further delays  
may be justified by extraordinary circumstances, but shall in all cases be  
documented and reported to ICE.
9. The Facilities' advance vetting and scheduling of call requests shall be  
performed as follows:
- i. Advance vetting shall be limited to internet searches. Facilities shall  
not directly contact the individual/entity sought to be contacted in  
advance of the call, except to contact an attorney who requests to  
schedule a call with a Class Member.

1                   ii. If an attorney requests to schedule a call with a Class Member, the  
2                   Facilities shall coordinate with the attorney to schedule the call. For  
3                   other calls, Facilities do not have to coordinate advance scheduling  
4                   with call recipients. The Facilities shall, however, honor reasonable  
5                   written requests for specific times for phone room calls (*e.g.*, detainee  
6                   asks to make call after 3:30, when witness finishes work shift) when  
7                   made with sufficient advance notice.

8                   10. Facilities may do on-the-spot vetting in the presence of the Class Member  
9                   caller to verify the call recipient and to confirm that the recipient is willing to  
10                  take the call. The officer shall not reveal Class Members' custody status or  
11                  location as part of the vetting.

12                11. If there is no answer, Class Members shall be permitted to leave voicemail  
13                messages from Phone Room phones. If the call recipient has an automated  
14                voicemail tree, Class Members shall be permitted to navigate that system to  
15                reach their intended call recipient, including making additional attempts if  
16                they are unsuccessful in their navigation of the system the first time.

17                12. Should requests for access to the Phone Rooms overwhelm availability, ICE  
18                may charge a non-indigent Class Member a nominal fee for Phone Room use  
19                to call recipients that are not on the Free Call platforms or database described  
20                in paragraphs A.1 and A.2. Such fees shall not exceed the rates charged to  
21                ICE by the then-existing ICE DTS provider, nor shall they exceed then-  
22                applicable FCC guidance regulating inmate telephone services.

23                F. Messaging

24                1. At a minimum, ICE shall continue to provide the same messaging services at  
25                Mesa Verde as are currently in existence.

26                2. RCCC, Yuba, and Contra Costa shall deliver legally-related messages, which  
27                will not be confidential and may be primarily through an email-based system,  
28                within 24 hours.

                  3. Emergency messages and urgent attorney messages shall be delivered as soon  
                  as possible, but in no case more than six Facility waking hours after receipt.

                  G. On-Site Facilitators

                  1. ICE and/or the Facilities shall designate one or more telephone access  
                  facilitators ("on-site facilitators") for each Facility. There shall be one  
                  facilitator on duty at each Facility Monday-Friday during normal business  
                  hours. A back-up on-site facilitator shall be trained and Phone Room access  
                  shall be provided by other Facility staff as needed to accommodate calls  
                  within Facility waking hours that are outside of normal business hours.

                  2. The on-site facilitator's primary duties shall be to ensure that class members  
                  have adequate access to Legal Calls consistent with the requirements of this

1 Agreement, including calls from the Housing Unit Phones, phone booth  
2 phones, and Phone Room phones.

- 3 3. The individuals who act as on-site facilitators may be assigned to limited other  
4 duties as long as such duties do not prevent the facilitators from facilitating  
5 class members' requests for Legal Calls in a timely manner.

6 H. Accommodations for Indigent Class Members

- 7 1. ICE shall provide accommodations for free Legal Calls to Indigent Class  
8 Members.  
9 2. Indigence shall be determined at the time of the initial call request, and each  
10 subsequent request for additional time.  
11 3. ICE shall provide accommodations to Indigent Class Members by either  
12 allowing extra access to Phone Rooms or by providing phone credit for  
13 Housing Unit Phones. Such phone credit shall be provided in amounts of at  
14 least 30 minutes per request.

15 I. International Calling

- 16 1. ICE shall provide international call access for Legal Calls to Class Members,  
17 during Facility waking hours, with advance notice and as set forth below.  
18 2. If possible, international calling for Legal Calls will be made available  
19 through a Facility Phone Room in accordance with the procedures for  
20 accessing the Facility Phone Room in Section III.E.  
21 3. If possible, free international calling for Legal Calls for Indigent Class  
22 Members will be made available in accordance with the procedures for  
23 Accommodations for Indigent Class Members in Section III.H.  
24 4. If international calling for Legal Calls is not available through the Housing  
25 Unit Phones or Facility Phone Rooms in accordance with the above  
26 procedures, ICE shall accommodate requests for international Legal Calls in  
27 the Facility through other means. This may include providing a cell phone  
28 enabled with international calling through visiting ICE agents. If such other  
means are required, ICE will accommodate requests for international Legal  
Calls within no more than 72 hours of the request and will allow Indigent  
Class Members access to free international Legal Calls through these alternate  
means.  
5. On the rare occasion that a Class Member presents a compelling need for  
international Legal Call access outside of facility waking hours (e.g. to contact  
a business or agency within country business hours that do not overlap with  
facility waking hours), ICE shall make reasonable accommodations to  
facilitate the Class Member's timely communication with that entity.

J. Three Way Calling

- 1           1. Upon request based upon a stated need, such as needing an interpreter to join  
2           a call, ICE shall facilitate three-way calls in the Facility where the detainee is  
3           housed or at the nearest ICE field office. ICE shall attempt to accommodate  
4           such calls at the Facility, if possible, before transporting a Class Member to  
5           the field office for such a call.

6           K. Notice to Plaintiff Class Members of Telephone Options

- 7           1. ICE and the Facilities shall ensure that Class Members are informed that they  
8           must contact an ICE officer or a Facility staff member (such as the on-site  
9           facilitator or the housing unit officer) if they have difficulty making a Legal  
10          Call.  
11          2. An instruction sheet shall be printed and posted in at least English and  
12          Spanish, explaining all telephone access options, how to use the telephones  
13          and platforms available to ICE detainees, and how to make additional requests  
14          for telephone access, in clear, step-by-step instructions. The instruction sheet  
15          shall be posted in English and Spanish near the Facility phones. ICE and the  
16          Facilities shall instruct their officers to show the instruction sheet to any Class  
17          Member who requests assistance with making phone calls and explain its  
18          provisions.  
19          3. Plaintiffs agree to produce a video that conforms to Americans with  
20          Disabilities Act standards, with content and format to be approved by ICE, to  
21          explain telephone access options available to Class Members. This video shall  
22          be shown regularly in the Facilities, such that newly-admitted Class Members  
23          are generally shown the video within one week of arrival.

24          L. Accommodations for Language Minorities

- 25          1. Facilities shall, if local resources are not adequate or available, use a language  
26          line to provide interpretation of telephone materials and instructions upon the  
27          request of any Class Member who is unable to read English or Spanish, not to  
28          include a full translation of the detainee handbook.  
29          2. ICE shall post a notice near the Housing Unit Phones in the Facilities in the  
30          ten written languages most commonly used by respondents in the San  
31          Francisco Immigration Court, instructing individuals to ask the facilitator or  
32          housing unit officer for interpretation of telephone access instructions and  
33          assistance accessing telephones. The speed dial code for the ACLU of  
34          Northern California shall be included on this notice as a resource for reporting  
35          problems obtaining telephone access.  
36          3. Class members attempting to call individuals who do not speak English and  
37          do not understand the prompts to accept a call from the Facility shall be

1 provided access to Phone Room calls in accordance with the Phone Room  
2 request process described in Section III.E.

#### 3 **IV. IMPLEMENTATION AND OVERSIGHT**

##### 4 **A. Contracts with Facilities**

- 5 1. The terms of this Agreement that describe requirements to be fulfilled by  
6 Facilities alone or in conjunction with ICE shall be specified in contracts  
7 between ICE and the Facilities.
- 8 2. ICE shall complete the contracting process and implement the requirements of  
9 the Agreement within one year of the Agreement's Effective Date. However,  
10 to the extent compliance with a particular requirement of the Agreement is  
11 impracticable (as that term is defined under federal common law),  
12 Defendants' failure to implement that requirement will not be a violation of  
13 the Agreement.
- 14 3. Within 30 days of determining it will not complete a contract with a Facility  
15 and at least 60 days prior to transferring class members from that Facility, in  
16 anticipation of contract cancellation, Defendants shall notify Class Counsel  
17 and the Parties shall meet and confer to provide adequate telephone access to  
18 the affected Class Members in the counties covered by this Agreement,  
19 possibly to include modifying the Agreement. If the Parties are unable to  
20 reach agreement, they shall refer the dispute to this Agreement's alternative  
21 dispute resolution process under the terms of the existing Agreement.

22 **B.** Compliance with contract terms shall be monitored by ICE Contracting Officer's  
23 Representative (COR) and Contracting Officer's Technical Representative (COTR),  
24 as well as by other ICE personnel visiting the facilities, who will report  
25 compliance/non-compliance to the COR/COTR. Failure to meet Settlement terms by  
26 the Facilities shall be treated as a contract deficiency and addressed through the cure  
27 process used by CORs/COTRs.

28 **C.** ICE shall require training of all local ICE personnel with duties related to detention  
management and oversight as well as Facility staff whose duties include supervising  
detainees or responsibilities related to detainee phone access in the Facilities. This  
training shall include the requirements of this Agreement, applicable ICE detention  
standards for telephone access, and the policies and procedures for implementation of  
this Agreement at the Facility/ies relevant to the particular individuals being trained.

**D.** Within 180 days of the Agreement's Effective Date, ICE shall modify forms used  
during weekly Facility Liaison Visits and the annual ERO Detention Management  
Division (G324A) audit (currently carried out by the Nakamoto Group, Inc.) to  
evaluate compliance with each of the following:

1. When a detainee requests a direct or free Legal Call to an attorney, court,  
or government agency or demonstrates a compelling need for other direct

1 or free calls, access is granted within 24 hours of the request and  
2 ordinarily within 8 facility waking hours. Further delays may be justified  
3 by extraordinary circumstances.

- 4 2. The facility documents and reports to ICE/ERO any delays in responding  
5 to requests for free or direct Legal Calls beyond 8 facility waking hours.
- 6 3. Detainees are provided private settings for Legal Calls such that calls  
7 cannot be overheard by officers, other staff, or other detainees.
- 8 4. The facility has a system for taking and delivering telephone messages to  
9 detainees, including but not limited to attorney messages, other messages  
10 related to a detainee's legal case, and emergency messages, and ensures  
11 the timeliness of such message delivery.
- 12 5. The facility provides translation and interpretation services to detainees  
13 who are unable to read written telephone access rules in the languages  
14 provided.
- 15 6. Detainees in segregation or other environments with limited physical  
16 access to telephones have reasonable and equitable access to telephones  
17 during waking hours (i.e., they can request telephone calls and receive  
18 them in a timely manner).

## 14 **V. ENFORCEMENT AND MONITORING**

- 15 A. Plaintiffs' counsel shall be provided with the following records within 45 days of the  
16 Agreement's Effective Date or 45 days of finalizing the particular record, whichever  
17 is later, to the extent such records are or were created after November 19, 2015,  
18 through the termination of this Agreement:
  - 19 1. Amendments/modifications that relate to telephone access or other issues  
20 outlined in this Agreement to Facility contracts to which ICE is a party or  
21 authorized rider for Mesa Verde, RCCC, Contra Costa, and Yuba;
  - 22 2. Amendments, modifications, or new contracts for ICE Detainee Telephone  
23 Service to the extent they are implemented at Mesa Verde (i.e., the contract  
24 currently held by Talton);
  - 25 3. Any new contract for the Contra Costa jail account/phone management  
26 system, once awarded;
  - 27 4. Any changes to Facility policies related to telephone access;
  - 28 5. Any modified templates or forms of internal compliance instruments,  
worksheets, inspection reports, and similar documents that relate to telephone  
standards, telephone access, and/or the terms of this Agreement; and
  6. Any revised orientation materials related to telephone access (unless Plaintiffs  
are involved in drafting orientation materials and therefore already have  
copies of the final orientation materials).

- 1 B. To the extent class members are relocated to different facilities within Contra Costa,  
2 Yuba, Sacramento or Kern County for more than 10 days, ICE shall meet and confer  
3 with Class Counsel to agree upon facility-specific provisions that may be necessary to  
4 effectuate the intent of this Agreement at the different facility.
- 5 C. During the terms of this Agreement, Class Counsel shall be provided with the  
6 following records:  
7 1. Any Contract Discrepancy Reports (CDR) issued by the COTR to one of the  
8 four detention service providers concerning a facility's failure to correct a  
9 deficiency related to a provision of this Agreement.  
10 2. The annual inspection report for telephone access by February 15th of the  
11 calendar year following the inspection of each Facility.  
12 3. Records reflecting notifications from the Facilities to ICE of the Facilities'  
13 failure to accommodate a request for Phone Room access within 24 hours or  
14 phone booth access within 2 hours.
- 15 D. In addition, on request, Class Counsel shall be provided with the following  
16 documents covering a specified future month from a specified facility selected by  
17 Class Counsel, not to exceed six selections a year:  
18 1. Detainee kites and grievances to ICE relating to telephone access (including  
19 responses); and  
20 2. Weekly Telephone Serviceability Worksheets regarding that Facility.
- 21 E. ICE shall continue to conduct internal testing of Housing Unit Phones in accordance  
22 with its current telephone serviceability report procedures and any changes that are  
23 adopted pursuant to section IV.D of this Agreement.
- 24 F. ICE shall permit Class Counsel, with reasonable advance notice, to conduct  
25 interviews with Class Members once per year per Facility. ICE shall ensure that  
26 Facilities accommodate these interviews by providing Class Members a convenient  
27 way to indicate their interest in participating in the interviews and facilitating group  
28 or individual meetings between Class Counsel and willing Class Member  
participants. These interviews are in addition to, not a substitute for, any interviews  
that Class Counsel may schedule using each Facility's normal attorney meeting  
procedures.

## 23 **VI. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION**

- 24 A. The Court shall retain jurisdiction to supervise the implementation of this  
25 Agreement and to enforce its terms, and the terms of this Agreement shall be  
26 incorporated into the Order of the Court approving the Agreement.
- 27 B. The parties agree that the Court will not be asked to exercise jurisdiction to  
28 supervise the implementation of this Agreement or to enforce its terms until  
exhaustion of the following dispute resolution process:



1. Should Class Counsel believe in good faith that Defendants are engaging in a pattern or practice of non-compliance with requirements of this Agreement at a specific Facility or Facilities, Class Counsel shall promptly notify counsel for Defendants, in writing, of the specific grounds upon which non-compliance is alleged. If Class Counsel so request after providing notice of noncompliance with respect to a specific Facility, Defendants shall commence retention within three business days (72 hours, not including weekends and holidays) of the detainee kites and grievances to ICE from that Facility regarding telephone access, and the detainee kites and grievances to that Facility regarding telephone access, including Class Member requests contemplated under Section III of this Agreement. Document retention shall continue for fourteen (14) days. Defendants' counsel shall forward the documents to Class Counsel after a reasonable period of internal processing, not to exceed five business days, not including weekends and holidays, after the end of the 14-day retention period.
2. Within thirty (30) calendar days after receipt of the notice from Class Counsel, counsel for Defendants shall notify Class Counsel of Defendants' position and any action it has taken or intends to take in connection therewith. The parties shall negotiate in good faith in an effort to resolve any remaining disputes. The parties agree that this negotiation period will be considered exhausted if the parties jointly determine that negotiations have reached an impasse, or if either party invokes the formal meet-and-confer process under paragraph 3 of Section VI.B. of the Agreement.
3. If any dispute cannot be resolved informally under paragraphs 1 or 2 of Section VI.B. of the Agreement, counsel for either party may notify counsel for the opposing party by letter and request that counsel meet and confer. The parties shall meet within ten (10) calendar days of such notice in an attempt to arrive at an amicable resolution of the dispute.
4. The parties may refer any unresolved dispute to Magistrate Judge Ryu for mediation. If Magistrate Judge Ryu is no longer available or does not consent to serve as mediator, the parties may refer the unresolved dispute to another magistrate judge in the Northern District of California for mediation, if the parties mutually agree on the mediator and such mediator consents. If the dispute has not been resolved through mediation within 14 days, counsel may mutually agree to continue mediation or counsel may seek to enforce the Agreement through a motion in district court. Additionally, if the parties cannot agree on a mediator, if no mutually-agreed-on mediator consents, or if

1 the parties mutually agree to bypass mediation, counsel may seek to enforce  
2 the Agreement through a motion in district court.

3 5. If the parties do not reach resolution under the procedures of Paragraphs 1-4  
4 of Section VI.B. of the Agreement, either party may then file a motion  
5 requesting that the district court resolve the dispute.

6 6. The parties agree that the mediation process described in Section VI.B of the  
7 Agreement shall be conducted confidentially and that no public disclosure  
8 shall be made regarding the mediation process at any time before, during, or  
9 after the mediation process, except that the final result of the mediation may  
10 be disclosed. All documents and information disclosed by either party during  
11 the mediation process shall not be admissible in any judicial proceeding. All  
12 statements or conclusions of the mediator shall not be admissible in any  
13 subsequent judicial proceeding.

14 C. The parties agree that any action or proceeding to enforce the terms of this  
15 Agreement shall be brought exclusively in the United States District Court for the  
16 Northern District of California. The Court in this proceeding shall have the power  
17 to award such relief and issue such judgments as the Court deems proper and  
18 appropriate.

## 19 **VII. TERMS OF ORDER FOR NOTICE, HEARING AND FINAL JUDGMENT**

20 A. Concurrently with their filing of this Agreement, Class Counsel shall apply to the  
21 Court for Preliminary Approval of the Settlement provided for in this Agreement  
22 and entry of a Preliminary Approval Order. Such Preliminary Approval will seek  
23 approval of a Notice to the Class substantially in the form appended hereto as  
24 Exhibit B, as well as a finding that the following satisfies the publication  
25 requirements of Rule 23 of the Federal Rules of Civil Procedure: Within ten (10)  
26 business days of the date of the Preliminary Approval, (i) posting the Notice to the  
27 Class and this Settlement Agreement in appropriate places on the ICE public  
28 website; (ii) providing the Notice to the Class and this Agreement to immigration  
attorneys in the San Francisco Bay Area through the local American Immigration  
Lawyers' Association and National Lawyers Guild listservs; (iii) providing the  
Notice to the Class and this Agreement in appropriate places on the website of the  
ACLU of Northern California; (iv) posting the Notice to the Class in all housing  
units in the Facilities where Class Members are housed, in an area prominently  
visible to immigration detainees; and (v) providing individual copies of the Notice  
to the Class to any Class Members who are housed in segregation, medical,  
holding, or other specialized units with restricted access to common areas during

1 Facility waking hours. The Notice to the Class and this Agreement shall remain  
2 posted, and shall be maintained or replaced with new copies as needed, until the  
3 Court issues an order finally approving or rejecting the Settlement. Class Counsel  
4 shall be responsible for meeting the notice requirements listed in (ii)-(iii) above  
5 and ensuring maintenance of such notice, and Defendant ICE shall be responsible  
6 for meeting the notice requirements listed in (i), (iv) and (v) above and ensuring  
7 maintenance of such notice. The parties shall request that Class Members be  
8 provided at least forty-five (45) days to submit objections to the Court after the  
9 Notice to the Class is posted and distributed.

- 10
- 11 B. If the Settlement contemplated by this Agreement is approved by the Court,  
12 counsel for the parties shall request that the Court enter a Final Judgment  
13 substantially in the form appended hereto as Exhibit C.
- 14 C. Within ten (10) business days following the Effective Date of Settlement, ICE shall  
15 provide the Notice of Final Settlement substantially in the form appended hereto as  
16 Exhibit D by posting it in all housing units in the Facilities where Class Members  
17 are housed, in an area prominently visible to immigration detainees, as well as  
18 providing individual copies of the Notice to the Class to any Class Members who  
19 are housed in segregation, medical, holding, or other specialized units with  
20 restricted access to common areas during facility waking hours. The Notice of Final  
21 Settlement shall remain posted, and shall be maintained or replaced with new  
22 copies as needed, until the obligations of this Agreement are terminated.
- 23 D. ICE shall post a Spanish language translation of both the Preliminary Notice and  
24 the Final Notice to the Class. Should Class Counsel provide to ICE translations in  
25 other languages, ICE shall post a notice informing Class Members that such  
26 translations are available. Class Counsel shall provide such notices in sufficient  
27 time to allow ICE to meet the posting requirements in Sections VII.A and C. of the  
28 Agreement.

## **VIII. EFFECTIVE DATE OF SETTLEMENT; TERMINATION**

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

- 1 B. In the event that the Court does not approve the Agreement, or the Court's approval  
2 of the Agreement or the Final Judgment is reversed, vacated, or terminated on  
3 appeal, the parties' good-faith adherence to the terms of this Agreement prior to  
4 said reversal, vacatur, or termination shall not be considered unlawful.
- 5 C. This Agreement is subject to and contingent upon Court approval under Rule 23(e)  
6 of the Federal Rules of Civil Procedure. Defendants' Counsel and Class Counsel  
7 shall have the right to terminate this Agreement by providing written notice of their  
8 election to do so ("Termination Notice") to all other parties hereto within thirty  
9 (30) days of (a) the Court's declining to enter the Preliminary Approval Order or  
10 modifying that Preliminary Approval Order in any material respect; (b) the Court's  
11 declining to approve the Settlement embodied in this Agreement or any material  
12 part of it; (c) the Court's declining to enter the Final Judgment or modifying the  
13 Final Judgment in any material respect; or (d) the Court of Appeals or the United  
14 States Supreme Court's reversing, vacating, or modifying in any material way the  
15 Final Judgment.
- 16 E. Except as otherwise provided herein, in the event the Settlement is terminated or  
17 modified in any material respect or fails to become effective for any reason, then  
18 the Settlement shall be without prejudice and none of its terms shall be effective or  
19 enforceable; the parties to this Agreement shall be deemed to have reverted to their  
20 respective status in the Action as of the date and time immediately prior to the  
21 execution of this Agreement; and except as otherwise expressly provided, the  
22 parties shall proceed in all respects as if this Agreement and any related orders had  
23 not been entered. In the event the Settlement is terminated or modified in any  
24 material respect, the parties shall be deemed not to have waived, not to have  
25 modified, or not be estopped from asserting any additional defenses or arguments  
26 available to them.

## 27 **IX. TERMINATION OF OBLIGATIONS**

28 Unless earlier terminated by operation of Section VIII, the obligations of this Agreement shall terminate within five (5) years of the Effective Date.

## **X. NO ADMISSION OF WRONGDOING**

- A. This Agreement, whether or not executed, and any proceedings taken pursuant to it:
1. shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Class Members,

1 consistent with the Constitution and laws of the United States, and applicable  
2 regulations;

3 2. shall not be offered or received against the Defendants as evidence of, or  
4 construed as or deemed to be evidence of, any presumption, concession, or  
5 admission by any of the Defendants of the truth of any fact alleged by the  
6 Plaintiffs or the validity of any claim that had been or could have been asserted  
7 in the Action or in any litigation, or the deficiency of any defense that has been  
8 or could have been asserted in the Action, or of any liability, negligence, fault,  
9 or wrongdoing of the Defendants; or any admission by the Defendants of any  
10 violations of, or failure to comply with, the Constitution, laws or regulations;  
11 and

12 3. shall not be offered or received against the Defendants as evidence of a  
13 presumption, concession, or admission of any liability, negligence, fault, or  
14 wrongdoing, nor shall it create any substantive rights or causes of action against  
15 any of the parties to this Agreement, in any other civil, criminal, or  
16 administrative action or proceeding, other than such proceedings as may be  
17 necessary to effectuate the provisions of this Agreement; provided, however,  
18 that if this Agreement is approved by the Court, Defendants may refer to it and  
19 rely upon it to effectuate the liability protection granted them hereunder.

## 20 **XI. ATTORNEYS' FEES**

21 As set forth below, within 65 days of the Effective Date, Defendants shall pay to Class Counsel  
22 the sum of \$ 405,000 to settle and resolve Plaintiffs' claims to attorneys' fees and costs, if such  
23 award is approved by the Court.

- 24 A. The parties agree to the "Attorneys' Fee Settlement Amount" of \$405,000, to avoid  
25 further litigation and costs associated litigating a fee and cost request and to avoid  
26 the risks attendant to such proceedings. Plaintiffs shall file a motion for fees under  
27 Fed. R. Civ. P. 23(h) and 54(d)(2)).
- 28 B. Defendants agree not to oppose a motion seeking a fee award of \$405,000 or less.
- C. If for any reason the Court awards an amount in excess of \$405,000, Plaintiffs and  
Class Counsel expressly disclaim any and all right to collect the amount that  
exceeds \$405,000 from any person or entity, and agree, upon demand, to execute a  
release of any person's or entity's obligation to pay such sums. In the event the  
Court awards Class Counsel less than \$405,000, this Settlement Agreement shall

1 remain in full force and effect. Nothing in this Agreement waives or prevents  
2 Plaintiffs and Class Counsel from appealing an award of less than \$405,000.

- 3 D. Subject to the foregoing provisions, Defendants shall deliver the Attorneys' Fee  
4 Settlement Amount to Class Counsel by direct wire transfer into Class Counsel's  
5 designated account. Class Counsel shall provide to Defendants all information  
6 necessary to accomplish the direct wire transfer into that account within five days  
7 of the Effective Date. Plaintiffs and Class Counsel acknowledge that payment of the  
8 Attorneys' Fee Settlement Amount by Defendants or any of them in accordance  
9 with the wire instructions shall resolve all of Defendants' liability for such amount.
- 10 E. Class Counsel shall be fully responsible for the allocation and payment of the  
11 Attorneys' Fee Settlement Amount among themselves.
- 12 F. Defendants' payment of the Attorneys' Fee Settlement Amount shall satisfy any  
13 claims by Plaintiffs' Counsel and/or Class Counsel for attorney fees and costs  
14 related to and for the Action, including any fees and costs that may be incurred by  
15 Plaintiffs' Counsel and/or Class Counsel in the course of monitoring the  
16 implementation of this Agreement (except as set forth in Paragraph G). Plaintiffs,  
17 Plaintiffs' Counsel, and Class Counsel, and their heirs, executors, administrators,  
18 representatives, attorneys, predecessors, successors, assigns, agents, affiliates, and  
19 partners, and any persons they represent, by operation of any final judgment entered  
20 by the Court, fully, finally, and forever release, relinquish, and discharge the  
21 Defendants of and from any and all claims for attorney fees and costs related to and  
22 for the Action, including any fees and costs that may be incurred in the course of  
23 monitoring the implementation of this Agreement (except as set forth in Paragraph  
24 G).
- 25 G. In the event that Class Counsel seek to enforce the terms of the Agreement pursuant  
26 to Section VI.C., nothing in this Agreement shall be interpreted as precluding  
27 Plaintiffs from seeking attorneys' fees and costs solely for such enforcement action.
- 28 H. If either party terminates the Agreement under Section VIII.C because the Court of  
Appeals or the United States Supreme Court reversed, vacated, or modified in any  
material way the Final Judgment after the Effective Date, Plaintiffs agree that Class  
Counsel shall return the Attorneys' Fee Settlement Amount, plus any interest  
earned, to Defendants upon final resolution of the appeal. Final resolution of the  
appeal occurs when all appellate remedies, including petitions for rehearing,  
petitions for rehearing *en banc*, and petitions for certiorari or any other form of  
review, have been finally disposed of in a manner that allows for termination of the  
Agreement.

1 **XII. ADDITIONAL PROVISIONS**

- 2 A. This Agreement, and the obligations incurred herein, shall be in full and final  
3 disposition of the Action with prejudice, including any and all Settled Claims against  
4 Defendants. On the Effective Date, Plaintiffs and Class Members shall be deemed to  
5 have fully, finally, and forever released, relinquished, and discharged Defendants of  
6 and from any and all Settled Claims in accordance with Part II.
- 7 B. All of the exhibits attached hereto are hereby incorporated by reference as though  
8 fully set forth herein.
- 9 C. This Agreement may not be modified or amended, nor may any of its provisions be  
10 waived except by a writing signed by all parties hereto or their successors-in-interest.
- 11 D. The waiver by one party of any breach of this Agreement by any other party shall not  
12 be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 13 E. This Agreement and its exhibits constitute the entire agreement among the parties  
14 hereto concerning the Settlement of the Action, and no representations, warranties,  
15 or inducements have been made by any party hereto other than those contained and  
16 memorialized in such documents.
- 17 F. This Agreement may be executed in one or more counterparts. All executed  
18 counterparts and each of them shall be deemed to be one and the same instrument  
19 provided that counsel for the parties to this Agreement shall exchange among  
20 themselves original signed counterparts.
- 21 G. This Agreement shall be binding upon, and inure to the benefit of, the successors and  
22 assigns of the parties hereto.
- 23 H. This Agreement shall not be construed more strictly against one party than another  
24 merely by virtue of the fact that it, or any part of it, may have been prepared by  
25 counsel for one of the parties, it being recognized by the parties that this Agreement  
26 is the result of negotiations between the parties and that all parties have contributed  
27 substantially and materially to the preparation of this Agreement.
- 28 I. All counsel and any other person executing this Agreement and any of the exhibits  
hereto, or any related settlement documents, warrant and represent that they have the  
full authority to do so and that they have the authority to take appropriate action  
required or permitted to be taken under the Agreement to effectuate its terms.
- J. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in  
seeking Court approval of this Agreement and to promptly agree upon and execute  
all such other documentation as may be reasonably required to obtain final approval  
by the Court of the Settlement.

1 For and on behalf of Defendants:

2  
3 EXECUTED this \_\_\_ day of \_\_\_\_\_, 2016.

4  
5 **Katherine J. Shinnors,**

6 Trial Attorney, District Court Section

7 Office of Immigration Litigation

8 Civil Division

9 United States Department of Justice

10 P.O. Box 868, Ben Franklin Station Washington, D.C. 20044

11  
12 **Counsel for Defendants**

13 For and on behalf of Plaintiffs and the Class:

14  
15 EXECUTED this \_\_\_ day of \_\_\_\_\_, 2016.

16  
17 **Julia Harumi Mass, Esq.**

18 American Civil Liberties Union  
19 of Northern California, Inc.

20 39 Drumm Street

21 San Francisco, CA 94111

22 415-621-2493

23 415-255-8437 (fax)

24 [jmass@aclunc.org](mailto:jmass@aclunc.org)

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38 **Counsel for Plaintiffs**

39  
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For and on behalf of Defendants:

EXECUTED this 13<sup>th</sup> day of June, 2016.



**Katherine J. Shinnars,**  
Trial Attorney, District Court Section  
Office of Immigration Litigation  
Civil Division  
United States Department of Justice  
P.O. Box 868, Ben Franklin Station Washington, D.C. 20044

**Counsel for Defendants**

For and on behalf of Plaintiffs and the Class:

EXECUTED this \_\_\_ day of \_\_\_\_\_, 2016.

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**Counsel for Plaintiffs**