

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

-----X
SHMUL KAPLAN, et al.,

Plaintiffs,

Civil Action No. 06-5304

- against -

MICHAEL CHERTOFF, et al.,

Defendants.

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STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE

Plaintiffs in the above-captioned matter, on behalf of themselves, the Class and all Class Members (as defined below), and Defendants Michael Chertoff, Secretary of Homeland Security; Michael B. Mukasey, Attorney General; Emilio Gonzalez, Director of the United States Citizenship and Immigration Services (“USCIS”); Robert S. Mueller, III, Director of the Federal Bureau of Investigation (“FBI”); Michael J. Astrue, Commissioner of the Social Security Administration (“SSA”); and Donald Monica, District Director, USCIS Philadelphia District (together, “Defendants”), by and through their attorneys, hereby enter into this Stipulation and Agreement of Settlement and Release (the “Stipulation”), as of the date beneath Defendants’ Counsel’s signature, effective upon the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS:

A. Plaintiffs filed suit on behalf of themselves and all others similarly situated against Defendants in the United States District Court for the Eastern District of Pennsylvania on December 6, 2006, seeking class certification, designation of Class Counsel and declaratory and injunctive relief;

B. By Order of March 29, 2007, the Court denied Defendants' Motion to Dismiss in part and granted it in part;

C. To date, the Court has not granted class certification, designation of Class Counsel, declaratory or injunctive relief;

D. Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the Complaint and Amended Complaint, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to the Named Plaintiffs, the Class, or the Class Members, but have agreed to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and terminate the Action and any and all Settled Claims as defined in paragraph 10.

E. Class Counsel have conducted discussions and arm's length negotiations with Defendants' Counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Named Plaintiffs, the Class, and all Class Members.

F. After considering the benefits that the Named Plaintiffs, the Class, and the Class Members will receive from settlement of the Action and the risks of litigation, Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and in the best interests of the Named Plaintiffs, the Class, and the Class Members; have agreed that the Released Parties should be released from the Settled Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the dismissal with prejudice of all Settled Claims as defined in paragraph 10. The relief contained in this Stipulation is meant to provide relief to

those Class Members actually or potentially adversely affected by 8 U.S.C. § 1612(a) prior to or during the life of the agreement.

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

I. DEFINITIONS:

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

1. “Action” means the above-captioned action pending in the United States District Court for the Eastern District of Pennsylvania (docket no. CV 06-5304).
2. “Class” means, for purposes of this settlement only, a plaintiff class certified pursuant to Rule 23 of the Federal Rules of Civil Procedure, comprising all non-United States citizens who are receiving or have received Supplemental Security Income (“SSI”) and are or may be subject to termination or suspension of SSI pursuant to 8 U.S.C. § 1612(a)(2)(A), prior to a final decision on their current or future Application for Naturalization, Form N-400, and oath ceremony to become a United States citizen. The Class ceases to exist, and all membership in the Class ends, upon the termination of this Stipulation pursuant to paragraph 54.
3. “Class Member” means any person included in the Class.
4. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement provided for in this Stipulation shall become effective, as set forth in paragraph 50 below.

5. “Plaintiff(s)” or “Named Plaintiff(s)” means Shmul Kaplan, Tasim Mandija, Feride Mandija, Rouzbeh Aliaghaei, Lidiya Burtseva, Nelli Olevskaya, Eshetu Meri, Sara Bachman, Moisey Bachman, Joe Beoplue, Sonyunor Beoplue, Glayon Bloue, Isaak Rozenblit, Semen Savaranskiy, Lyudmila Shirokaya, Igor Stepanov, and Yevheniya Strizhevskaya.

6. “Plaintiffs’ Counsel” or “Class Counsel” means Community Legal Services, Inc.; Ballard Spahr Andrews & Ingersoll, LLP; Hebrew Immigrant Aid Society and Council Migration Service of Philadelphia; and the Sargent Shriver National Center on Poverty Law. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

7. “Expedite” or “Expedited Processing” refers to the process by which USCIS provides priority action on applications for adjustment of status to lawful permanent residence (I-485) and on applications for naturalization (N-400), on processes within the control of USCIS. When implementing Expedited Processing hereunder, USCIS will (i) provide and/or request priority action on any pending or future security checks for the current application; (ii) provide priority action on any internal processing at USCIS; and (iii) provide the Class Member with priority for the earliest available appointment for applications requiring an appointment. Additionally, USCIS will administer or schedule the Oath of Allegiance for the Class Member at the next available opportunity.

8. An Expedite does not mean that background checks or the adjudication of an application will be completed by a date certain, nor does Expedited Processing guarantee approval of an application.

9. “Released Parties” means any and all of the Defendants, their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

10. “Settled Claims” means any and all actions, in law or equity, that were asserted or that could have been asserted by Class Members or anyone acting on behalf of or in place of a Class Member, based upon the facts alleged or that could have been alleged in the Amended Complaint relating to the subject of this action, including but not limited to the Due Process, Equal Protection, and APA claims. Only individual actions against USCIS under 8 U.S.C. § 1447(b) and individual actions against SSA under 42 U.S.C. § 405(g) are excepted from the claims settled by this action.

11. “Settlement” means the settlement provided for in this Stipulation.

II. RELEASE; SCOPE AND EFFECT OF RELEASE

12. On the Effective Date, the Named Plaintiffs, the Class, 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 (“Releasing Parties”), shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from any and all of the Settled Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Released Parties.

13. This Stipulation is contingent on the preservation of the Order of the Court on Defendants’ Motion to Dismiss for Lack of Jurisdiction (published at 481 F. Supp. 2d 370 (E.D. Pa. 2007)). Neither Plaintiffs’ nor Defendants’ concurrence with the preservation of the Order

constitutes, and shall not be deemed to imply, their agreement with the findings or decisions contained in that Order.

14. Class Counsel, as fiduciaries to individual Class Members, agree to any and all sharing of information between USCIS and SSA required by paragraphs 22, 23, 25 and 26 of this Stipulation.

15. In consideration for the releases contained herein, and subject to this Stipulation's conditions, USCIS will institute procedures for the Expedited Processing of all current and future Class Members' applications for adjustment to lawful permanent resident status and applications for naturalization during the existence of this Stipulation.

III. PROCESSING OF CLASS MEMBERS' APPLICATIONS

A. General Expedited Processing

16. Each Class Member may request Expedited Processing of his or her pending application for adjustment of status, Form I-485, or naturalization, Form N-400, at any time. USCIS will grant Expedited Processing where such applications of Class Members have been pending without a decision for six months, unless otherwise specified in this Settlement. Requests made prior to the passage of six months shall be considered by USCIS once the six month mark is reached without further action by the individual requesting Expedited Processing.

17. Expedited Processing may be requested (i) through the USCIS 1-800 telephone number, (ii) by appearing in person at the local USCIS District Office, (iii) by written request included with the filing of the application, or (iv) by mail to the office at which the application was filed. USCIS may verify that the individual is a Class Member by requesting the individual to produce a copy of SSA correspondence addressed to the individual.

18. Plaintiffs agree that nothing in this Stipulation limits Defendants' authority under the law to promulgate regulations, issue policy directives and guidance, and to take other

action, as necessary, without notice to Plaintiffs, concerning the processing of such applications including, but not limited to, the substantive scope of background and security investigations conducted on aliens. However, regardless of how the processing of such applications may change, the obligation to provide Expedited Processing pursuant to this Stipulation shall be preserved so long as Expedited Processing pursuant to this Stipulation, including priority processing of FBI name checks, is consistent with the best interest of national security as determined by Defendants.

19. Where USCIS is implementing Expedited Processing for an application and the FBI has not completed its name check, USCIS will promptly notify the FBI of the need for priority processing of the pending FBI name check separately from other priority processing requests. The FBI shall thereafter promptly undertake priority processing of the name check for the specified individual. However, nothing in this Stipulation obligates the FBI to accept more than 100 requests for priority processing from USCIS per week. USCIS reserves the right to prioritize Class members within the group of individuals receiving FBI priority name check processing pursuant to USCIS's operational needs. As USCIS is the FBI's customer agency, the FBI will prioritize requests for priority name check processing in accordance with USCIS's requests, as communicated to the FBI by USCIS. Every other week, USCIS and the FBI will conduct status checks on all pending requests for priority processing of name checks submitted pursuant to this Stipulation.

B. Class Members Whose SSI Benefits Were Terminated Or Suspended Pursuant To 8 U.S.C. § 1612(a)(2)(A).

20. Within 60 days of the Effective Date, Defendants, acting through SSA, shall compile a mailing list of all those Class Members whose SSI benefits were terminated or suspended pursuant to 8 U.S.C. § 1612(a)(2)(A) and whose benefits have not been restored, and

those whose SSI benefits may be terminated or suspended prior to the June following the Effective Date (“Terminated Members”). This mailing list of Terminated Members will promptly be made available to Class Counsel in paper and electronic format.

21. Within 75 days of the Effective Date, in conjunction with Plaintiffs’ Counsel pursuant to paragraph 36.a, Defendants USCIS and SSA will jointly prepare and USCIS will mail a distinctive letter to the Terminated Members. The letter shall include: a) a section encouraging all who have not yet filed applications for either naturalization or adjustment of status to do so as soon as they are statutorily eligible to file; b) notification of the availability of a fee waiver application process for naturalization (N-400) and adjustment of status (I-485) applications; c) information on the availability of Expedited Processing for those who have applications pending with USCIS; and d) a central telephone number for contacting Class Counsel.

22. Any letters sent pursuant to paragraph 21 that are returned to sender within 90 days of the mailing will be collected and provided to USCIS. USCIS will promptly attempt to identify updated addresses for those individuals through its current address change system. Where an updated address is available, USCIS will promptly resend the letters to the updated address. At the end of the 90-day period, USCIS will provide Class Counsel with the mailing list of the individuals with updated addresses in paper and electronic format.

23. Six months after the paragraph 21 letter has been sent, SSA will provide USCIS with identifying information for all Terminated Members who have not been restored to SSI benefits. Within three months thereafter, USCIS will attempt to match the SSA identifying information with information in USCIS’ systems, in order to identify Terminated Members with pending applications. USCIS will, on its own initiative and without the need for a request,

Expedite the processing of all Forms I-485 and N-400 of Terminated Members where USCIS has positively identified Terminated Members through this matching process, even if the application has not been pending for more than six months.

C. Class Members Whose SSI Benefits Will Terminate Or Be Suspended Pursuant to 8 U.S.C. § 1612(a)(2)(A) Within One Year.

24. In or about May or June of 2008, Defendant SSA will provide individual notices to those SSI beneficiaries who face potential termination or suspension of SSI pursuant to 8 U.S.C. § 1612(a)(2)(A) in the twelve months starting July 1, 2008 (“Pending Members”). A mailing list of Pending Members will promptly be made available to Class Counsel in paper and electronic format. The notices, to be developed in conjunction with Plaintiffs’ Counsel pursuant to paragraph 36.b, shall include: a) a section encouraging all who have not yet filed applications for either naturalization or adjustment of status to do so as soon as they are statutorily eligible to file; b) notification of the availability of a fee waiver application process for naturalization (N-400) and adjustment of status (I-485) applications; c) information on the availability of Expedited Processing for those who have applications pending with USCIS; and d) a central telephone number for contacting Class Counsel.

25. Any letters sent pursuant to paragraph 24 that are returned to SSA within 90 days of the mailing will be collected by SSA and provided to USCIS. USCIS will promptly attempt to identify updated addresses for those individuals through its current address change system. Where an updated address is available, USCIS will promptly resend the letters to the updated address. At the end of the 90-day period, USCIS will provide Class Counsel with the mailing list of the individuals with updated addresses in paper and electronic format.

26. Three months after the paragraph 24 letter has been sent by SSA, SSA will provide USCIS with identifying information for all Pending Members. Within three months

thereafter, USCIS will attempt to match the SSA identifying information with information in USCIS' systems, in order to identify Pending Members with pending applications. USCIS will, on its own initiative and without the need for a request, Expedite the processing of all Forms I-485 and N-400 of Pending Members where USCIS has positively identified Pending Members through this matching process, even if the application has not been pending for more than six months.

D. Dissemination of Information to Class

27. In addition to the notices mailed to individual Class Members pursuant to subsections B & C herein:

a. Within 63 days of the Effective Date, USCIS will issue press releases regarding the availability of Expedited Processing for those non-U.S. citizens currently receiving SSI benefits and for those whose SSI benefits have been terminated or suspended pursuant to 8 U.S.C. § 1612(a)(2)(A);

b. Within 90 days of the Effective Date, USCIS, through its Community Relations Program, will communicate the availability of Expedited Processing through USCIS' existing network of community-based and non-profit organizations who provide advice and assistance to immigrants, and to the private immigration bar, including AILA chapters through the AILA national office;

c. Within 63 days of the Effective Date, SSA and USCIS will include information regarding Expedited Processing for Class Members on their respective websites;

d. SSA will provide information regarding the availability of Expedited Processing, the importance of prompt filing and the availability of a fee waiver application process in all annual reminder Notices regarding the seven-year cut-off provision which SSA sends to current and future Class Members at least during the pendency of this Stipulation; and

e. Within 120 days of the Effective Date, USCIS will prominently display posters in all USCIS public areas to address the availability of Expedited Processing for all N-400 and I-485 applications filed by immigrants subject to the limit on SSI benefits pursuant to 8 U.S.C. § 1612(a).

28. All communications to Class Members shall be in English, subject to paragraph 31, and may be in other languages at the discretion of the government agency. A separate SSA “fact sheet” for non-citizen SSI recipients, with information about the importance of prompt filing, the availability of a fee waiver application process, the availability of Expedited Processing, and where to obtain additional information, will be available within 90 days of the Effective Date on the SSA “Gateway” website, which provides access to translations of documents in 15 different languages. In addition, on request by an individual applicant, SSA will endeavor to have interpreters and/or translators available to assist with inquiries.

E. Miscellaneous Provisions

29. Within 63 days of the Effective Date, USCIS will inform all relevant staff at USCIS District Offices and Service Centers about their responsibilities regarding Expedited Processing under this Stipulation. This communication will also include a statement that a Class Member may be applying for a fee waiver; that any application for a fee waiver will be adjudicated under the applicable fee waiver guidance; and that a Class Member will likely establish eligibility for a fee waiver. USCIS will provide Plaintiffs’ counsel with a copy of the final signed guidance, solely for informational purposes, no less than three days before it is disseminated to USCIS staff. The review and comment provision of paragraph 36 will not be applicable to this guidance, but the dispute resolution provisions of paragraph 42 apply to any dispute. Plaintiffs’ counsel may not disseminate nor disclose the guidance outside of Plaintiffs’

counsel unless USCIS later makes the guidance public. Defendants' counsel shall immediately inform Plaintiffs' counsel when and if the guidance is made public.

30. Within 63 days of the Effective Date, SSA will notify all relevant staff, including those at SSA District and Field Offices, about the availability of Expedited Processing and USCIS fee waivers, by issuing an Emergency Message that will address the issues raised by this Stipulation. In the Emergency Message, SSA will encourage SSA staff to provide information to Class Members regarding the availability of Expedited Processing and USCIS fee waivers, USCIS' policies concerning expediting of naturalization (N-400) and adjustment of status (I-485) applications, and where to get more information from USCIS. Ultimately, SSA will issue a Program Operations Manual System (POMS) instruction to address the issues raised by this Stipulation.

31. All mailings to class members by Defendant agencies pursuant to paragraphs 20 and 24 will include the following paragraph translated into the Arabic, Cambodian, Chinese, Farsi, French, Haitian-Creole, Laotian, Russian, Spanish, and Vietnamese languages: "This is a very important letter about continuing your Supplemental Security Income (SSI). Please read it carefully. If you cannot read English, please take this letter to someone who can read it to you right away."

32. Where the sharing of information among Defendants USCIS and SSA is required by this Stipulation, Defendants shall comply with all requirements of the Privacy Act.

33. When USCIS or SSA provide Class Counsel with personal identifying information of Class Members pursuant to paragraphs 20, 22, 24 and 25 of this Stipulation, Class Counsel shall use the information only to comply with the Stipulation's terms. Class Counsel may not duplicate or disseminate the personal identifying information except where

dissemination is necessary to comply with the requirements of the Stipulation, and shall destroy or return the personal identifying information within 30 days of the termination of this Stipulation pursuant to paragraph 54, except for one copy which may be retained in Class Counsel's archive of the Action until 30 days after the running of the Pennsylvania Statute of Limitations for an attorney malpractice claim accruing on or before the termination of the obligations of the parties under this Stipulation pursuant to paragraph 54 of this Stipulation. Class Counsel assume all obligations and responsibilities for the storage, retention, use and release of the data consistent with applicable law.

34. Released Parties and Plaintiffs' Counsel will mutually approve (a) all Notices to the Class under Paragraph 47; and (b) the Notice of Final Settlement Agreement under Paragraph 49.

35. A flow chart picturing the various provisions and deadlines shall be attached to this Stipulation as Exhibit A.

36. Plaintiffs' Counsel will have the opportunity to review and provide written comments to Defendants on the written materials listed below:

- a. the letter to Terminated Members under Paragraph 21;
- b. the letter to Pending Members under Paragraph 24;
- c. the press releases from USCIS under Paragraph 27(a);
- d. announcements posted on USCIS's and SSA's websites under Paragraph 27(c);
- e. the revisions to the annual letter sent by SSA to Class Members under Paragraph 27(d);
- f. the USCIS posters under Paragraph 27(e);

g. the revisions to the SSA “fact sheet” for non-citizen SSI recipients under Paragraph 28; and

h. the Emergency Message and POMS section from SSA under Paragraph 30.

Released Parties will provide draft copies of these materials to Plaintiffs’ Counsel at least 30 days prior to their intended distribution in order to permit Plaintiffs’ Counsel adequate time to review and comment. Plaintiffs’ Counsel will make comments within 10 days of receipt. Released Parties will consider the comments of Plaintiffs’ Counsel and will provide Class Counsel with a final version prior to distribution.

IV. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION

37. The parties agree that this Court will retain continuing jurisdiction for the duration of the Stipulation to supervise the implementation of this Stipulation and to enforce its terms, and the terms of this Stipulation shall be incorporated into the Order of the Court approving the Settlement.

38. The parties agree that this Court will not be asked to exercise jurisdiction to supervise the implementation of this Stipulation or to enforce its terms until exhaustion of the dispute resolution process in paragraphs 42-43 has occurred.

39. In or about January 2009, Defendants will provide Class Counsel with the following reports:

a. The number of SSI beneficiaries who have lost SSI benefits due to the limitations in 8 U.S.C. § 1612(a) since the Effective Date;

b. The number of SSI beneficiaries who, after losing benefits due to the seven-year limitation, have been reinstated on SSI since the Effective Date;

- c. The number of SSI beneficiaries who would be expected to lose their SSI benefits between January 1, 2009 and December 31, 2011;
- d. I-485 cycle times for asylees, refugees, and regular adjustment;
- e. N-400 cycle times;
- f. The number of SSI Expedites initiated by USCIS per month as the result of a call to the USCIS 1-800 telephone number;
- g. The total number of SSI priority name check requests made by USCIS to the FBI per month;
- h. The statistical results of the data matches required by paragraphs 23 and 26;
- i. The FBI Name Check Unit's Fiscal Year Significant Activity Report.

40. 120 days after USCIS has completed the data match described in paragraph 23, USCIS will randomly select a 100-name sample from the results of the data match on the "Terminated Members". USCIS will provide a status report to Class Counsel for each application reflecting whether each application has been expedited and the last of the following actions that has been completed for the application:

- I. A request has been sent to the FBI for priority processing of the name check;
- II. The FBI has completed its name check;
- III. The case has been assigned to a USCIS adjudicator for review;
- IV. A request for additional evidence has been sent to the applicant;
- V. An interview has been scheduled;
- VI. An oath has been scheduled; or

VII. There has been a decision made on the application.

The name, address, and alien registration number for each of the 100 cases will be forwarded to Class Counsel, in paper and electronic format.

41. Class Counsel and counsel for Defendants shall attend a single meet and confer on April 13, 2009, or another day mutually agreeable to counsel, to discuss all issues that have arisen during the initial period of implementation of the Stipulation.

42. The following dispute resolution process will be followed:

a. Should Class Counsel learn of an apparent failure of USCIS to institute Expedited Processing for an individual application, Class Counsel will promptly notify the contact for Defendants, in writing, of the fact or facts that form the basis of the contention. Such notice of apparent failure to institute Expedited Processing must be substantiated with specific detailed information sufficient to enable the contact to investigate and respond, and must include verification that the applicant has contacted the USCIS 1-800 telephone number no earlier than 64 days after the Effective Date, and that the time periods of subparagraphs (1) or (2) have been met. The content of every response from USCIS must be included. If 45 days have passed since the call was made to the USCIS 1-800 telephone number and no response has been received by the applicant, Class Counsel may proceed with notifying Defendants of the alleged failure to expedite. Within 45 days after receipt of the notice from Class Counsel, contact for Defendants shall notify Class Counsel of USCIS' position and any action it has taken or intends to take in connection therewith.

(1) If an applicant has lost his or her SSI benefits or will lose those benefits before June 30, 2009, the requisite call to the USCIS 1-800 telephone number can be

made no sooner than either a) 90 days after the date an applicant requested an expedite or b) 90 days after completion of the data match in paragraph 23.

(2) If an applicant is a current SSI beneficiary and will not lose his or her benefits until after June 30, 2009, the requisite call to the USCIS 1-800 telephone number can be made after the latter of either a) 6 months after the relevant N-400 or I-485 was filed or b) 90 days after an expedite request was made.

b. Starting from the Effective Date, upon learning of any fact or facts that constitute the basis for asserting that a party, without notice or good cause shown, has completely and materially failed to perform an affirmative act imposed by the Stipulation in paragraphs 20-31, the initiating party shall promptly notify the other party (the “responding party”) in writing of the fact or facts that support the contention and request a written response with respect thereto. Such allegations of violations of this Stipulation must be substantiated with specific, detailed, and timely information about the violation sufficient to enable the responding party to investigate and respond. Within 30 days after receipt of the notice, the responding party shall notify the initiating party in writing of the responding party’s position and any action it has taken or intends to take in connection therewith.

c. Starting from the Effective Date, upon learning of any fact or facts that constitute the basis for asserting that a party, without notice or good cause shown, has engaged in a pattern or practice constituting substantial noncompliance with the terms of this Stipulation, or that any party has expressly repudiated any of its terms, the initiating party shall promptly notify the other party (the “responding party”) in writing of the fact or facts that form the basis of the contention and request a written response with respect thereto. Such allegations of violations of this Stipulation must be substantiated with specific, detailed, and timely information about the

violation sufficient to enable the responding party to investigate and respond. Within 90 days after receipt of the notice, the responding party shall notify the initiating party in writing of the responding party's position and any action it has taken or intends to take in connection therewith.

d. During the 90 days following the completion of the appropriate process outlined in subparagraphs a, b, or c, 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 negotiations have reached an impasse.

43. Should the parties be unable to resolve any issues raised between them, after exhausting all of the applicable procedures in paragraph 42, such issues must be raised before a Magistrate Judge of the Eastern District of Pennsylvania upon which all parties agree, who shall hear, mediate, and, to the fullest extent possible, obtain the agreement of both parties to resolve the issue(s) in dispute.

44. The parties agree that the provision in paragraph 43 shall not be used to resolve any disputes regarding timeliness or form of the reports listed in paragraphs 39 and 40. The parties further agree that no claim may be made under the provisions in paragraphs 42 and 43 regarding the pace or extent of security check processing by either USCIS or the FBI. Cognizable claims regarding security check processing shall be limited to a failure to initiate or undertake Expedited or priority processing as described in paragraphs 7 and 19.

45. The parties agree that failure to comply with the deadlines in paragraphs 27-36 of this Stipulation does not constitute a violation of this Stipulation in the case of unforeseeable circumstances.

46. The parties agree that the mediation process shall be conducted confidentially and no public disclosure shall be made relating to the dispute before or during the mediation

process. All documents and information disclosed by either party during the mediation process shall be governed by rule 408 of the Federal Rules of Evidence and shall not be admissible in any judicial proceeding. All statements or conclusions of the mediator shall not be admissible in any subsequent judicial proceeding.

IV. TERMS OF ORDER FOR NOTICE, HEARING AND FINAL JUDGMENT

47. Concurrently with their filing of this Stipulation, Class Counsel and Defendants' Counsel shall jointly apply to the Court for Preliminary Court Approval of the Settlement provided for in this Stipulation and entry of a Preliminary Approval Order, substantially in the form appended hereto as Exhibit B. Such Preliminary Approval Order will seek approval of a Notice to the Class, as well as a finding that the following satisfies the publication requirements of Fed. R. Civ. P. 23: within five business days of the date of the Preliminary Court's Approval, (i) posting the Notice to the Class and this Stipulation in appropriate places on the USCIS and SSA public websites, and (ii) providing the Notice to the Class and this Stipulation to USCIS' Community Relations Program for distribution to the existing network of community-based and non-profit organizations who provide advice and assistance to immigrants, including AILA chapters through the AILA national office.

48. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter Final Judgment substantially in the form appended hereto as Exhibit C.

49. Within 60 days following the Court's entry of the Final Judgment, Defendants will publish a Notice of Final Settlement Agreement employing the same methods set forth in paragraph 47. The language of the Notice of Final Settlement Agreement will be agreed upon by the parties and will constitute an updated Notice to the Class.

V. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

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

51. In the event that the District Court's approval of the Stipulation or the Final Judgment referenced is voided on appeal, vacated, or terminated, the parties' good-faith adherence to the terms of this Stipulation prior to said voidance, vacation or termination shall not be considered unlawful.

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

53. Except as otherwise provided herein, in the event the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Stipulation; and except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. In the event the Settlement is terminated or modified in any material respect, the Defendants shall be deemed not to have waived, modified, or be estopped from asserting any additional defenses available to them.

VI. TERMINATION OF OBLIGATIONS

54. The obligations of this Stipulation shall terminate after two (2) years and eleven (11) months from the Effective Date without further action by the Court.

VII. NO ADMISSION OF WRONGDOING

55. This Stipulation, whether or not executed, and any proceedings taken pursuant to it:

a. shall not be construed to waive, reduce or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Class Members, consistent with the Constitution, laws of the United States, and applicable regulations;

b. shall not be offered or received against the Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence,

fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and

c. shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

VIII. ATTORNEYS' FEES

56. Within 120 days of entry of a final and nonappealable judgment in this case approving this Stipulation, Defendants will deliver to Class Counsel the sum of \$275,000, in settlement of all claims for attorneys' fees and costs that could have been or will be claimed in this litigation. Defendants shall bear any costs incurred in connection with notifying the class of the terms and conditions of this Stipulation as provided in paragraphs 47 and 49.

IX. ADDITIONAL PROVISIONS

57. This Stipulation, and the obligations incurred herein, shall be in full and final disposition of the Action with prejudice, including any and all Settled Claims against Defendants. On the Effective Date, Plaintiffs shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Defendants of and from any and all Settled Claims, subject to the provisions of paragraph 53.

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

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

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

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

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

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

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

65. All counsel and any other person executing this Stipulation 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 pursuant to the Stipulation to effectuate its terms.

66. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Order in Connection with the Settlement Proceedings, the Stipulation and Agreement of Settlement, 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.

THE PLAINTIFFS

BY: James H. M. Stein
Dated: 12/12/07

THE DEFENDANTS

BY: [Signature]
Dated: 4 JANUARY 2008