

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

YI DONG, *et al.*,

Plaintiffs,

v.

TAE D. JOHNSON, *et al.*,

Defendants.

Civil Action No.: 17-2092 (ES) (JSA)

**ORDER CERTIFYING SETTLEMENT
CLASS AND GRANTING FINAL
APPROVAL OF SETTLEMENT AND
JUDGMENT**

THIS MATTER having come before the Court for consideration of a joint motion by the parties¹ to grant final certification of a settlement class and final approval for the parties' settlement agreement, (ECF No. 136), and by Class Counsel's Unopposed Motion for an Award of Reasonable Costs and Attorneys' Fees, (ECF No. 134), and

WHEREAS, the Court having reviewed and considered the Amended Settlement Agreement and Release of April 11, 2022 ("Amended Settlement Agreement"), all of the parties' submissions in support of the settlement, the representations, arguments and recommendations of counsel, and having considered the record of these proceedings; and for the reasons more fully set forth on the record of the final fairness hearing held on May 2, 2022; the Court now makes the following:

¹ The named plaintiffs are Yi Dong, Xian Feng, Yiqi Huang, Shaofu Li, Kaushalkumar Patel, Hirenkumar Patel, and Qing Wang. The defendants are Tae D. Johnson, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement ("ICE"); Ur Mendoza Jaddou, in her official capacity as Director, U.S. Citizenship and Immigration Services ("USCIS"); Alejandro Mayorkas, in his official capacity as Secretary, Department of Homeland Security; the United States Department of Homeland Security ("DHS"); the United States Department of State ("DOS"); the United States Department of Education ("DOE"); and the United States of America.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.

2. This action was commenced on November 18, 2016, in the United States District Court for the Eastern District of New York.

3. The action was transferred to this District Court in or about April 2017.

4. The Court dismissed the lawsuit for lack of subject-matter jurisdiction, but the U.S. Court of Appeals for the Third Circuit reversed and remanded to this District Court for further proceedings consistent with its opinion. *See Fang v. Dir., ICE*, 935 F.3d 172 (3d Cir. 2019).

5. Plaintiffs thereafter filed a Second Amended Complaint (the operative complaint) on March 18, 2020, naming the current named class representatives and defendants. (See ECF No. 74).

6. After more than five years of litigation, the parties executed a proposed settlement agreement on November 22, 2021.

7. On December 19, 2021, the parties jointly moved for the Court to preliminarily certify a settlement class and preliminarily approve the parties' proposed settlement agreement pursuant to Federal Rule of Civil Procedure 23(e)(1)(B).

8. On January 10, 2022, the Court granted the parties' motion for preliminary approval. Consistent with Rule 23(e)(1)(B) of the Federal Rules of Civil Procedure, the Court: (1) found that it would likely be able to certify a class consisting of "Any noncitizen who, for any period of time, enrolled in the University of Northern New Jersey ('UNNJ')"; (2) appointed the

law firm Kurzban Kurzban Tetzeli & Pratt, P.A. as class counsel; (3) granted preliminary approval to the agreement; and (4) ordered the parties to undertake the notice procedures outlined in the agreement by no later than March 3, 2022 (the “Notice Period”). (See ECF No. 133, at 2–7).

9. Having reviewed the submissions in connection with the parties’ joint motion, the Court finds that the parties have complied with the notice procedures ordered by the Court, and that such procedures constitute valid and sufficient notice and represent the best notice practicable under the circumstances.

10. On April 11, 2022, the parties executed the Amended Settlement Agreement in response to concerns raised by several class members during the Notice Period regarding the wording and scope of several provisions in the original settlement agreement. The Court finds that Class Counsel provided valid and sufficient notice to potential class members of these amendments, which represent the best notice practicable under the circumstances.

11. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies a settlement class consisting of the following members: Any noncitizen who, for any period of time, enrolled (or was found by Defendants to have enrolled) in the University of Northern New Jersey (‘UNNJ’) or the spouse or child of such a noncitizen who was accorded derivative student (F-2 nonimmigrant) status by virtue of the principal spouse or parent’s enrollment in UNNJ.

12. This class meets the requirements for class certification under Federal Rule of Civil Procedure 23(a) because: (1) the class members are so numerous that joinder of all class members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the named plaintiffs are typical of those of the class; and (4) the named plaintiffs and their counsel will fairly and adequately protect the interests of the class.

13. On the basis of all the issues in this litigation, and the provisions of the Amended Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendants in this case, pursuant to Federal Rule of Civil Procedure 23(a).

14. The Court finds that the Settlement was entered into at arm's length by experienced counsel and only after extensive negotiations, which included a Settlement Conference with the Undersigned. The Settlement is not the result of any collusion on the part of Class Counsel or Counsel for the Defendants.

15. The class representatives and class counsel have adequately represented the class.

16. The liability issues in this case have been vigorously contested.

17. This Settlement has the benefit of providing relief to class members now without further litigation.

18. The Court finds that attorneys Ira J. Kurzban, Edward F. Ramos, and Elizabeth Montano of the law firm of Kurzban Tetzeli & Pratt fairly and adequately represent the interests of the Settlement class and hereby confirms them as class counsel, pursuant to Rule 23.

19. The Court further finds that the class should be certified under Federal Rule of Civil Procedure 23(b)(2), as Defendants' actions apply generally to the class such that final injunctive relief is appropriate for the class as a whole.

20. Pursuant to Federal Rule of Civil Procedure 23(e)(2), and after considering the factors described in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975), the Court finds that the terms of the Settlement are fair, reasonable, and adequate.

NOW, THEREFORE, BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED:

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Class is certified for purposes of final settlement:

Any noncitizen who, for any period of time, enrolled (or was found by Defendants to have enrolled) in the University of Northern New Jersey ('UNNJ') or the spouse or child of such a noncitizen who was accorded derivative student (F-2 nonimmigrant) status by virtue of the principal spouse or parent's enrollment in UNNJ.

2. Having found that the Settlement Agreement is fair, reasonable, and adequate and complies in all respects with Rule 23 and the applicable law, the Court hereby grants final approval of the Settlement and all of its terms and conditions.

3. Class Counsel's unopposed motion for an award of reasonable attorneys' fees and expenses is granted, and Class Counsel is hereby awarded \$452,549.40 in attorneys' fees and costs, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, less any taxable costs assessed against Defendants pursuant to 28 U.S.C. § 1920.

4. The awarded attorneys' fees and costs are to be paid and distributed in accordance with the terms of the Amended Settlement Agreement.

5. The parties shall file a Stipulation of Dismissal in accordance with the terms of the Amended Settlement Agreement.

6. Without affecting the finality of this Order and Judgment, the Court shall retain continuing jurisdiction over the action, the parties, and the settlement class pursuant to the terms of the Amended Settlement Agreement.

7. The Clerk of the Court is directed to terminate the motions at ECF Nos. 134 and 136.

Dated: May 3, 2022

s/Jessica S. Allen
Hon. Jessica S. Allen
United States Magistrate Judge