

SETTLEMENT AGREEMENT

A.O., et al., v. Jaddou, et al., Civil Action No. 5:19-CV-06151-SVK (DMR)

Plaintiffs A.O., A.S.R., L.C., R.M., and I.Z.M. (“Plaintiffs”), on behalf of themselves and all members of the proposed class (“Class Member(s),” as further defined below), and Defendants U.S. Citizenship and Immigration Services (“USCIS”); Department of Homeland Security (“DHS”); Ur M. Jaddou, in her official capacity as Director of USCIS; Alejandro Mayorkas, in his official capacity as Secretary, DHS; and Terri Robinson, in her official capacity as Director, USCIS National Benefits Center, (collectively, “Defendants”) by and through their attorneys, hereby enter into this Settlement Agreement, entered into this 17th day of August, 2021, and effective upon the Effective Date defined below. Plaintiffs and Defendants are jointly referred to as the “Parties.”

I. RECITALS

- A.** On September 27, 2019, Plaintiffs commenced this litigation against Defendants for declaratory and injunctive relief based on allegations that USCIS imposed a “new requirement” (the “Reunification-Authority Requirement”) for Special Immigrant Juvenile (“SIJ”) petitions, which was contrary to state and federal law and violated the Administrative Procedure Act (“APA”), the Immigration and Nationality Act (“INA”), and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- B.** In support of their claims, Plaintiffs alleged that in early 2018, Defendants adopted an unlawful policy without notice that imposed a new requirement on SIJ petitions; that the Reunification-Authority Requirement (as defined below) violates the law; that the conclusion based on the Reunification-Authority Requirement that the California Juvenile Court lacks the jurisdiction and authority to issue SIJ findings when declaring an immigrant child dependent on the juvenile court under Section 300 of the California Welfare and Institutions Code violates the law; and that the new requirement would disqualify the Named Plaintiffs and the Class they propose to represent from receiving approval of their SIJ petitions. Defendants deny these allegations.
- C.** The Court entered a preliminary injunction on May 1, 2020, prohibiting Defendants, during the pendency of the litigation, from: (i) denying Special Immigrant Juvenile petitions on the grounds that a California juvenile court does not have jurisdiction or authority to “reunify” an 18-to-20-year-old with his or her parents; and (ii) initiating removal proceedings against or removing any Special Immigrant Juvenile petitioner who has been declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code and whose Special Immigrant Juvenile petition has been denied on the grounds that the California juvenile court did not have jurisdiction or authority to “reunify” an 18 to

20-year-old petitioner with his or her parents. The Court also ordered Defendants to provide no fewer than 14 days' notice to Plaintiffs' Counsel before Defendants take any adverse adjudicatory or enforcement action against any of the individual Plaintiffs or members of the Proposed Class.

- D.** The Parties entered settlement negotiations and attended a settlement conference session with Magistrate Judge Donna Ryu on July 28, 2020. On August 17, 2021, the Parties finalized and executed this Agreement resulting from the negotiations supervised by Judge Ryu. Accordingly, the Parties agree, subject to approval by the Court and certification of a class for settlement purposes, that the Claims shall be fully and finally compromised, settled, and Defendants shall be released from the Settled Claims (as defined in Section II) subject to the terms and conditions set forth in this Agreement.
- E.** Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the 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 Plaintiffs or Class Members. Defendants represent that, according to longstanding Agency interpretation as reflected in internal guidance and training manuals, the Reunification-Authority Requirement should not have applied to SIJ petitions supported by court orders issued pursuant to jurisdiction under California Welfare and Institutions Code §§ 300 and 303. Nonetheless, Defendants have agreed to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of further protracted litigation, including trial and appeal; and (ii) finally put to rest and terminate the Action and any and all Settled Claims as defined in Section II.
- F.** Both Plaintiffs and Defendants, through counsel, have conducted discussions and arms' length negotiations regarding a compromise and settlement of the Action with a view to settling all matters in dispute.
- G.** This Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings regarding the Claims, or of any fault on the part of Plaintiffs or Defendants, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability or non-liability by or against any Party.
- H.** Defendants have agreed to settlement of the Action, to provide the relief detailed herein, and to withdraw their opposition to Plaintiffs' motion for class certification, and jointly request that the Court grant Plaintiffs' pending class certification motion for settlement purposes only.

- I. Plaintiffs have agreed that Defendants shall be released from the Settled Claims pursuant to the terms and provisions of this Settlement; and Plaintiffs have agreed to the dismissal with prejudice of this Action and all Settled Claims as defined in Section II.

NOW, THEREFORE, it is hereby AGREED, by and among the Parties to this Settlement, 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 Agreement, that the Settled Claims shall be compromised, settled, forever released, barred, and dismissed with prejudice, upon and subject to the following terms and conditions:

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

“**Action**” means the civil action captioned *A.O., et al., v. Cuccinelli, et al.*, Case No. 5:19-CV-06151-SVK, United States District Court for the Northern District of California.

“**Agreement**” means this Class Action Settlement Agreement, including all exhibits.

“**Adverse Adjudicatory Action**” means a (i) decision of denial, (ii) Notice of Intent to Deny (“NOID”), (iii) Notice of Intent to Revoke (“NOIR”), or (iv) decision revoking a previously-granted SIJ petition, on the ground that the California Juvenile Court, under California Welfare and Institutions Code § 300, does not have jurisdiction or authority to “reunify” an 18- to 20-year-old immigrant with his or her parents (the “Reunification-Authority Requirement”).

“**Notification List**” means the list compiled by Defendants and produced in response to the discovery order, Dkt. No. 77, in this Action.

“**Class Member(s)**” means any Persons who have been declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code and who fall into one of the following two subcategories:

1. “**Existing Class Member(s)**” means any Persons **(1)** who were declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code on or before October 15, 2019; **(2)** who (i) filed an SIJ petition with USCIS after turning 18 year old but prior to their 21st birthday, between January 1, 2017 and October 15, 2019, or (ii) were between 18 years old and 21 years old and eligible to file an SIJ petition between January 1, 2017 and October 15, 2019 but did not file an SIJ petition because of the Reunification-Authority Requirement; and **(3)** whose SIJ petitions have not been approved as of the Effective Date of this Agreement.
2. “**Future Class Member(s)**” means any Persons **(1)** who have been or will be declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code; **(2)** who, after turning 18 years old but prior to their 21st birthday, filed or will file their SIJ petitions after October 15, 2019; and

(3) who receive denials of their SIJ petitions on the grounds that the state court did not have jurisdiction or authority to reunify them with their parents. For the avoidance of doubt, no such denials should occur under the terms of this Agreement.

“**Class Notice**” means a notice substantially in the same form as Exhibit 1.

“**Compliance Report**” means a report filed by Defendants as described in Section VI.B, substantially in the same form as Exhibit 3.

“**Defendants**” means U.S. Citizenship and Immigration Services; Department of Homeland Security; Tracy Renaud, in her official capacity as Senior Official Performing the Duties of the Director, USCIS; Alejandro Mayorkas, in his official capacity as Secretary, DHS; and Terri Robinson, in her official capacity as Director, USCIS National Benefits Center; their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

“**Defendants’ Counsel**” means the United States Attorney’s Office for the Northern District of California and the United States Department of Justice, Office of Immigration Litigation – District Court Section.

“**Effective Date of Settlement**” or “**Effective Date**” means the date when all of the following shall have occurred: (a) certification of a settlement class; (b) entry of the Preliminary Approval of the Settlement Agreement; (c) approval by the Court of this Settlement Agreement, following notice to the Class and a fairness hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (d) entry by the Court of the Final Order approving the Settlement Agreement, in all material respects and dismissing the case with prejudice with regard to all Settled Claims.

“**Final Order**” means entry by the Court of an order substantially in the form of Exhibit 4 that grants final approval of this Agreement as binding upon the Parties and the Class Members, and dismisses the case, with prejudice respecting the Settled Claims.

“**Named Plaintiffs**” means A.O., A.S.R., L.C., R.M., and I.Z.M.

“**NOID**” means Notice of Intent to Deny.

“**NOIR**” means Notice of Intent to Revoke.

“**Parties**” means Plaintiffs and Defendants.

“**Person**” means an individual considered a “juvenile,” “child,” “minor,” or equivalent term subject to the jurisdiction of a juvenile court under the law of the state in which he or she resides.

“**Plaintiffs’ Counsel**” or “**Class Counsel**” means Milbank LLP and Southwestern Law School’s Immigration Law Clinic. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

“**Preliminary Notice Date**” means the date by when the Class Notice is distributed in accordance with Section IV.

“**Reunification-Authority Requirement**” means the requirement that a state court must have the authority to place a Person in the custody of his or her parent(s) and/or the authority to order the reunification of a Person with his or her parent(s) in order to make a qualifying determination of whether the Person’s reunification with one or both parents is not viable on the basis of abandonment, abuse, or neglect, or a similar basis under state law, for the purposes of SIJ eligibility.

“**RFE**” means Request for Evidence.

“**Settled Claims**” means all claims for relief that were brought on behalf of Class Members based on the facts and circumstances alleged in the Complaint (ECF No. 1), including but not limited to claims for declaratory or injunctive relief based on allegations that USCIS imposed a “new requirement” (the “Reunification-Authority Requirement”) for approval of SIJ petitions, which was contrary to state and federal law and violated the Administrative Procedure Act, the Immigration and Nationality Act, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

“**SIJ**” means special immigrant juvenile, as defined in 8 U.S.C. § 1101(a)(27)(J).

“**SIJ petition**” means a Form I-360, “Petition for Amerasian, Widow(er), or Special Immigrant,” where Special Immigrant Juvenile is one subset of petitioners who are eligible to file Form I-360, as defined below:

1. Is present in the United States;
2. Is unmarried and less than 21 years of age;
3. Has been declared dependent upon a juvenile court in the United States, or who such a court has legally committed to or placed under the custody of an agency or department of a state, or an individual or entity appointed by a state or juvenile court;
4. Has been the subject of a determination by a juvenile court in the United States that reunification with one or both of the juvenile’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
5. Has been the subject of administrative or judicial proceedings that determined that it would not be in the juvenile’s best interest to be returned to the juvenile’s or his or her parent’s country of citizenship or nationality or last habitual residence.

“**SIJ regulation**” means 8 C.F.R. § 204.11.

“**SIJ statute**” means 8 U.S.C. § 1101(a)(27)(J).

“**Updated Class Notice**” means the Notice provided to Members of the Notification List sent as described in Section IV.F, H, substantially in the same form as Exhibit 2.

“**Updated Notice Date**” means the date by when the Updated Class Notice is distributed in accordance with Section IV.H.

III. AGREED UPON TERMS.

- A. Defendants will not impose or apply the Reunification-Authority Requirement when adjudicating SIJ petitions.
- B. Defendants will not reinstate the Reunification-Authority Requirement for SIJ petitioners who have a court order from a California juvenile court.
- C. Defendants will not apply the Reunification-Authority Requirement to SIJ petitions supported by court orders issued pursuant to jurisdiction under California Welfare and Institutions Code §§ 300 and 303.
- D. Defendants agree and will take the position when adjudicating SIJ petitions that pursuant to California Civil Procedure Code § 155 and California Welfare and Institutions Code § 303, the Juvenile Division of the California Superior Court (the “Juvenile Court”) is a “juvenile court” for the purpose of making custodial placements and/or legal commitments; issuing findings regarding whether abandonment, abuse, neglect, or a similar basis under state law renders reunification between a Person under the age of 21 and his or her parent not viable; and issuing findings regarding best interests pursuant to California law, as required under the SIJ statute and the SIJ regulation.
- E. Defendants agree and will take the position when adjudicating SIJ petitions that pursuant to California Welfare and Institutions Code §§ 300 and 303, a California Juvenile Court has the jurisdiction and the authority to retain jurisdiction over a ward or a dependent child of the Juvenile Court until the ward or dependent child attains 21 years of age and issue findings, as required under the SIJ statute and the SIJ regulation.
- F. Defendants agree and will take the position when adjudicating SIJ petitions that a Person is not disqualified from being designated a SIJ provided that: 1) state law confers upon a state court the jurisdiction to declare the Person dependent, legally commit the Person to an individual or entity, or place the Person under the custody of an individual or entity regardless of age; and 2) the Person is unmarried and under the age of 21 when he or she petitions to be a SIJ.

IV. NOTICE AND APPROVAL PROCEDURE

- A. **Preliminary Approval.** As soon as practicable after the execution of this Agreement, the Defendants shall withdraw their opposition to Plaintiffs’ motion for class certification [Dkt No. 121]; and the Parties shall jointly request that the Court deem Plaintiffs’ motion for class certification under

Federal Rule of Civil Procedure 23(b)(2) [Dkt. No. 105] to be a motion for class certification for settlement purposes only and grant such motion. Further, the Parties shall jointly move for a Preliminary Approval Order, substantially in the form of Exhibit 5, preliminarily approving this Agreement and this settlement to be fair, just, reasonable, and adequate, approving the Class Notice to the Class Members as described *infra* IV.B, and setting a hearing to consider Final Approval of the Settlement, any objections thereto.

B. Notice for Fairness Hearing. Plaintiffs and Defendants agree to finalize the exact language of the Class Notice and the Spanish translation before seeking Preliminary Approval. Within five business days after entry of the order granting Preliminary Approval (unless otherwise modified by the Parties or by order of the Court) and certification of the settlement class, the Parties shall effectuate the following:

1. Plaintiffs shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement;
2. Plaintiffs shall directly contact individuals on the Notification List, through their counsel, by email to their counsel, attaching a copy of the Class Notice (in English and Spanish) and the Settlement Agreement;
3. USCIS shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on USCIS's website on the "Legal Resources, Legal Settlement Notices" and the "Special Immigrant Juveniles" sections;
4. Plaintiffs shall distribute the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on relevant email/listserv mailing lists for direct service providers; and
5. USCIS's Office of Public Affairs shall email the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000 subscribed users.

C. Objections. Any Class Member who wishes to object to the settlement and/or be heard at the Final Approval hearing must submit a written notice of objection and/or request to be heard at the final Approval Hearing, postmarked within 35 days after the Preliminary Notice Date (or such other deadline as the Court might order), by mailing the notice of objection and/or request to be heard to the Class Action Clerk for the Northern District of California, San Jose Courthouse, or by filing the notice of objection and/or request to be heard with the Court. Each notice of objection or request to be heard must include: (i) the case name and number, (ii) the Class Member's name, (iii) the Class Member's current

address and telephone number, or current address and telephone number of the Class Member's legal representative, (iv) an explanation of why the Class Member objects to the Settlement, including the grounds therefore, any supporting documentation, and the reasons, if any, for requesting the opportunity to appear and be heard at the Final Approval hearing, and (v) if the Class Member wishes, a request that the objection be anonymized. Failure to comply with all requirements of this section shall constitute grounds for striking an objection or denying a request to be heard, if applicable.

- D. Opt-Outs.** Due to the nature of the relief offered to the Class Members, no Class Members are permitted to opt-out. All Class Members' denied, revoked, or pending SIJ Petitions will be adjudicated in accordance with this Agreement.
- E. Identification of Existing Class Members.** Plaintiffs will identify to Defendants any Existing Class Members who are not included in the Notification List within 45 days of the Preliminary Approval of the Settlement Agreement. Such potential Class Members shall provide their name and A-number, and, if available, I-360 receipt number and a copy of their SIJ findings from a Sect. 300 California court to Class Counsel, who will then evaluate and assess whether they believe the individual falls within the definition of the Class. If Class Counsel represents that the individual is a Class Member, then Class Counsel will provide a declaration stating that they have a good faith reason to believe that the individual is an Existing Class Member, as well as the basis for this good faith belief, which will include the name and A-number of the potential Class Member and, if available, the I-360 receipt number and copy of the potential Class Member's Sect. 300 California court order, to Defendants' Counsel. Defendants will then adjudicate the Existing Class Member's I-360 petition in accordance with the timelines for adjudication outlined in Section V, if Defendants confirm that that individual is an Existing Class Member.
- F. Class List.** The Class List will include all individuals in the Notification List, as well as any Existing Class Members identified by Plaintiffs in accordance with Section IV.E of this Agreement.
1. The Class List will contain the following columns of data points:
 - a. Last Name
 - b. First Name
 - c. A-number
 - d. G-28 Filed

- e. Attorney of Record as listed on G-28 Form
 - f. I-360 Receipt Number
 - g. I-360 Status (indicates if I-360 is Pending, Denied or Revoked)
 - h. RFE Flag (indicates if RFE was issued on I-360)
 - i. NOID Flag (indicates if NOID was issued on I-360)
 - j. NOIR Flag (indicates if NOIR was issued on I-360)
 - k. RFE/NOID/NOIR Issued
 - l. RFE/NOID/NOIR Response Received
 - m. I-485 Receipt Number (this column will contain a Receipt Number only if the I-485 has been denied)
 - n. I-485 Status (this column will indicate only if the I-485 has been denied)
 - o. I-765 Receipt Number (this column will contain a Receipt Number only if the I-765 has been denied).
 - p. I-765 Status (this column will only indicate if the I-765 has been denied)
 - q. Currently in Removal Proceedings (this column will only indicate a “Y” for yes if the petitioner is in removal proceedings, and will otherwise be blank)
 - r. Final Removal Order (this column will only indicate a “Y” for yes if the petitioner has a final removal order (from an IJ or the BIA), and will otherwise be blank)
 - s. Removed (this column will only indicate a “Y” for yes if the petitioner has been removed or deported from the United States)
2. Defendants will provide Plaintiffs’ Counsel with an updated version of the Class List, with information in every column updated as applicable, 55 days after the Effective Date of this Agreement or 55 days after Plaintiffs’ Counsel provides Defendants’ Counsel with any additional Class Member names pursuant to Section IV.E above, whichever date is later. Thereafter, Defendants will provide Plaintiffs’ Counsel the information

contained in the Class List for Existing Class Members with pending SIJ petitions every 55 days until all Existing Class Members' SIJ petitions are adjudicated.

- G. Final Approval Order and Judgment.** At the hearing on Final Approval, the Parties shall jointly move for entry of the Final Order, substantially in the form of Exhibit 4, granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on all Class Members; overruling any objections to the Agreement; ordering that the terms be effectuated as set forth in this Agreement; and giving effect to the releases as set forth in Section IX.
- H. Notice of Final Approval.** Not later than five business days after entry of Final Approval of the Agreement (unless otherwise modified by the Parties or by order of the Court), the Parties shall confirm Final Approval by providing an Updated Class Notice (in English and Spanish), to the same websites and distribution lists as set forth in Section IV.B, and by providing the Updated Class Notice (in English and Spanish) to Epiq, a third-party class administration service, for mailing to each of the individuals on the Notification List's last known address, and, if represented by an attorney, to their attorney's addresses. Defendants will post and make available the Updated Class Notice in the following U.S. Immigration and Customs Enforcement ("ICE") Detention Centers in California: Adelanto ICE Processing Center; Mesa Verde ICE Processing Facility; Imperial Regional Detention Facility; Otay Mesa Detention Center; and Yuba County Jail, for 180 days after the Effective Date of this Agreement.

V. ADJUDICATION PROCEDURES AND TIMELINE FOR SIJ PETITIONS OF EXISTING CLASS MEMBERS

- A.** The following provisions only apply to Existing Class Members.
- B.** Upon the Effective Date of the Settlement Agreement, which includes the dismissal of this case with prejudice, the preliminary injunction will dissolve. However, in order to effectuate the Settlement Agreement, for a period of 45 days beginning on the Effective Date ("45 Day Period"), the parties agree that the Defendants will continue to abide by the Court's Preliminary Injunction, Dkt. No. 67.
- C.** After the expiration of 45 days, Defendants will continue to abide by the Court's Preliminary Injunction for any Existing Class Member whose SIJ petition was previously revoked or denied based on the Reunification-Authority Requirement but whose SIJ petition has not yet been reopened and readjudicated in accordance with this agreement.

- D.** For Existing Class Members whose SIJ petitions remain pending after the expiration of 45 days, Defendants will provide 14 days' notice to Plaintiffs' Counsel before ICE removes or initiates removal proceedings against any Class Member whose SIJ petition remains pending. Neither the preliminary injunction nor the Agreement will impose any other obligation or restriction on Defendants regarding removing, initiating removal proceedings, or otherwise taking adverse enforcement actions against anyone, including persons on the Notification List or Class Members identified by Plaintiffs' Counsel pursuant to Section IV.E above, except as provided in Section V.O. below.
- E.** The Defendants must adjudicate all SIJ petitions of Existing Class Members on the Notification List or Existing Class Members identified to Defendants pursuant to Section IV.E above, in accordance with the SIJ Statute and the Agreement, according to the following schedule:
- 1.** Within 45 days of the Effective Date or within 45 days of Plaintiffs notifying Defendants of an Existing Class Member pursuant to Section IV.E., Defendants will reopen and readjudicate any SIJ petitions that were previously revoked or denied on the basis of the Reunification-Authority Requirement.
 - 2.** Defendants will adjudicate pending SIJ petitions on the Notification List or pending SIJ petitions of Existing Class Members identified to Defendants pursuant to Section IV.E within 45 days of the Effective Date.
 - 3.** USCIS will accept a petition filed before the expiration of 90 days after the Effective Date from any Existing Class Member who (i) turned 21 years old after February 26, 2018 but before October 15, 2019; (ii) who obtained a SIJ findings order prior to their 21st birthday, which was entered between January 1, 2017 and October 15, 2019 and which was based on the California court's continuing jurisdiction under Sections 300 and 303; and (iii) who did not file the SIJ petition prior to their 21st birthday because they believed the petition would be denied based on the Reunification-Authority Requirement. Such SIJ petition will not be denied based on the fact that the petitioner turned 21 years of age on or after February 26, 2018.
- F.** Should one or more adjudication(s) be delayed due to COVID-19 protections or furlough, counsel for Plaintiffs shall request to meet and confer with Defendants before seeking court intervention.
- G.** The above processing times in this Agreement may be tolled in certain circumstances outlined below, because such actions may take the case beyond the agreed time frame for final adjudication, per this Agreement.

This is to ensure that the petitioners are afforded the full response times as required by 8 C.F.R. § 103.2. Specifically:

1. If USCIS issues an RFE, it must allow the petitioner the permitted 87 days to respond, in addition to any COVID-19 specific additional timeframes.
 2. If USCIS issues a NOID, it must allow the petitioner the permitted 33 days to respond in addition to any COVID-19 specific additional timeframes.
 3. If USCIS must refer the case for adjudication of background checks or to the Fraud Detection and National Security Directorate, it would require time for that process to complete.
 4. If USCIS must have the A-file for final adjudication, and USCIS experiences a delay in obtaining the A-file, it would require additional time.
 5. If Defendants are unable to comply with Section V.E.1. or V.E.2. above within the designated 45 days, the obligations set forth in Section V.B above shall continue to apply as to all class members whose petitions are not adjudicated in accordance with this Section until Defendants fully comply with Section V.E.1 or V.E.2.
 6. The processing times in this Agreement may be tolled for no more than 120 days due to an outstanding background check or need to obtain an A-file. Except in rare circumstances, the processing times in this Agreement may be tolled for no more than 150 days due to a referral to the Fraud Detection and National Security Directorate.
- H.** For any Class Member who already received an RFE, NOID, NOIR, denial, or revocation of their SIJ petition, USCIS shall not issue a new RFE or NOID for any grounds not previously raised in the earlier RFE, NOID, NOIR, denial, or revocation. This provision does not preclude USCIS from issuing RFEs, NOIDs, denials, or revocations based on new grounds that did not exist at the time the earlier RFE, NOID, denial, or revocation was issued. The foregoing provision does not limit USCIS's ability to issue RFEs, NOIDs, NOIR, denials, or revocations based on changes to factual circumstances, which occurred after the date of the previously issued RFE, NOID, NOIR, denial, or revocation in accordance with the terms of this Agreement.
- I.** USCIS has identified three Class Members, G.N.G., J.L.O.T., and Y.S.P.R who received RFEs or NOIDs more than 180 days after they filed their SIJ petitions, and whose SIJ petitions were subsequently denied. USCIS has

reviewed the SIJ petitions filed by G.N.G., J.L.O.T., and Y.S.P.R and will sua sponte re-open and approve their SIJ petitions within 45 days of the Effective Date of this Agreement. USCIS shall send all relevant notices to the Class Members' mailing addresses as they appear in USCIS's database as of the date of the approval, and to the addresses of the Class Members' attorneys of record as listed on Form G-28, Notice of Appearance of Attorney or Accredited Representative. USCIS shall also provide Class Counsel a copy of the approval notices via email to CASIJClassAction@milbank.com.

- J.** SIJ Petitions of Class Members who have been issued RFEs, NOIDs, denials, NOIRs, or revocations solely based on the Reunification-Authority Requirement will be adjudicated in accordance with the terms of the Settlement Agreement and will be favorably adjudicated if otherwise approvable.
- K.** USCIS will not issue any general RFEs asking that a Class Member affirmatively identify any change in circumstance that is not evidenced in a separate immigrant petition post-dating receipt of the Class Member's SIJ petition or otherwise indicated in information available to USCIS. Any change that post-dates the previous RFE, NOID, NOIR, denial, or revocation (whether or not published in USCIS's Policy Manual or in any publication or document provided to USCIS adjudicators) in SIJ policy, legal guidance, regulation, or regulatory interpretation, that would make any Class Members ineligible for approval of his or her SIJ petition specifically based on the SIJ Petitioner's age, shall not apply to Class Members.
- L.** For any Class Member who has not already received an RFE, NOID, NOIR, or denial of their SIJ petition, USCIS may issue an RFE or NOID in accordance with the law and this Agreement. USCIS will list all grounds for issuance in the one RFE, NOID, or NOIR.
- M.** Notice contemplated in Section V.D. above shall be provided to the Class Member and attorney of record, and a copy to Class Counsel, sent to a designated e-mail address: CASIJClassAction@milbank.com. If a denial is issued, a copy shall be provided to Class Counsel.
- N.** For denials issued because a Class Member failed to respond to an RFE, NOID, or NOIR wherein the RFE, NOID or NOIR was based in part or in whole on the Reunification-Authority Requirement, USCIS will reopen and readjudicate the petition, and will provide the Class Member the opportunity to overcome any other evidentiary deficiencies.
- O.** ICE shall join, or, alternatively, shall not oppose, any Existing Class Member's Motion to Reopen Removal Proceedings where the Existing Class Member has an approved SIJ Petition and received a final order of

removal before his or her SIJ Petition was approved, except as otherwise indicated in this subsection. The Existing Class Member must file his or her Motion to Reopen Removal Proceedings within one year of the Effective Date of this Agreement and must cite to this Agreement in his or her Motion.

Should the Existing Class Member prefer to simultaneously file a Motion to Reopen Removal Proceedings and a Motion to Terminate Removal Proceedings Without Prejudice, where the immigration proceedings are terminated without prejudice, ICE shall join, or, alternatively, shall not oppose the motions. In such a case, the Existing Class Member must have an approved SIJ Petition and have received a final order of removal before his or her SIJ Petition was approved, except as otherwise indicated in this subsection. The Existing Class Member must file his or her Motion to Reopen Removal Proceedings and a Motion to Terminate Removal Proceedings Without Prejudice within one year of the Effective Date of this Agreement and must cite to this Agreement in his or her Motion.

ICE retains discretion to oppose an Existing Class Member's Motion to Reopen Removal Proceedings and/or Motion to Reopen and Terminate Removal Proceedings Without Prejudice in the following circumstances:

1. When the Existing Class Member has been convicted of an aggravated felony as defined in INA § 101(a)(43) or convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization;
2. When the Existing Class Member engaged in or is suspected of engaging in terrorism or terrorism-related activities; has engaged in or is suspected of engaging in espionage or espionage-related activities; or whose apprehension, arrest, or custody is otherwise necessary to protect the national security of the United States; or,
3. In extraordinary cases that do not do not fall within the enumerated categories above but are nonetheless national security or public safety risks as defined in Addendum A to this Agreement. For this exception to apply, the ICE Chief Counsel of the relevant Office of the Principal Legal Advisor ("OPLA") field location must approve ICE's opposition to ensure that the case is in line with Addendum A.

In the event that ICE determines to oppose an Existing Class Member's Motion to Reopen Removal Proceedings and/or Motion to Reopen and Terminate Removal Proceedings Without Prejudice in the above-referenced circumstances, Defendants shall provide Class Counsel with 14 days' notice of ICE's intent to so oppose such a motion.

- P.** USCIS shall not issue a Notice to Appear to any Class Member until USCIS has adjudicated their I-360 in accordance with the Settlement Agreement.
- Q.** USCIS shall promptly reopen all Applications to Register Permanent Residence or Adjust Status (I-485s) and Applications for Employment Authorization (I-765s) based on the I-485 applications that were denied at least in part because of the Reunification-Authority Requirement in conjunction with the denial of SIJ petitions for all Existing Class Members in accordance with this Settlement, the SIJ Statute, and the Immigration and Nationality Act. USCIS shall, within 45 days of any approval of the Existing Class Members' I-360, reopen all Applications to Register Permanent Residence or Adjust Status (I-485s) and/or Applications for Employment Authorization (I-765s) associated with the underlying approved I-360 petition as set forth below:
- 1.** For Class Members whose I-485s or I-765s were denied due to a denied underlying I-360 petition, where the I-485 is immediately approvable: When an underlying I-360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of the denied underlying petition, USCIS will reopen the I-485 and if immediately approvable, will readjudicate the I-485 within five (5) business days of approving the I-360 and will take no action on the denied I-765.
 - 2.** For Class Members whose I-485s or I-765s were denied due to a denied underlying I-360 petition, where the I-485 is not immediately approvable: When an underlying I-360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of the denied underlying petition, USCIS will reopen the I-485 and if not immediately approvable, will reopen and readjudicate the I-765 within five (5) business days of approving the I-360.
 - 3.** For Class Members whose I-485s or I-765s were denied due to a denied underlying I-360 petition, where the I-485 is not immediately approvable and the Employment Authorization Document ("EAD") has been terminated or has expired: When an underlying I-360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of the denied underlying petition and the I-765 had been previously approved but the EAD

terminated at the time of the I-485 denial or is presently expired, USCIS will reopen the I-485 within five (5) business days of approving the I-360 and if not immediately approvable, will reopen and issue an RFE for a no-fee I-765, and will adjudicate the I-765 upon the receipt of the RFE response.

VI. IMPLEMENTATION AND ENFORCEMENT OF THIS SETTLEMENT AGREEMENT

- A. Record Keeping Requirements:** USCIS shall retain and preserve all records, forms, logs, reports, and other written documents, including electronic records and files, that are relevant to the adjudications of SIJ petitions as set forth in this Agreement in accordance with all of USCIS's applicable records-retention requirements, procedures, and policies, which can be found at <https://www.archives.gov/research/immigration/aliens>. USCIS shall be responsible for maintaining and preserving, or supervising the maintenance and preservation of, these records. These records shall be maintained for so long as the Court retains jurisdiction over this action, or longer if required by law, as set out below in Section X.
- B. "Notice of Compliance" Reports.** Defendants shall provide the Court and Class Counsel with a Notice of Compliance Report at 55 days after the Effective Date of the Settlement Agreement. Only in the event that Defendants have not completed the adjudication deadlines outlined in Section V, Defendants will provide the Court and Class Counsel with Notice of Compliance Reports every 55 days after the last Notice until Defendants have completed adjudicating all of the Class Members' I-360 petitions in accordance with this Agreement.
- 1.** The Notice of Compliance Reports will identify all actions taken by Defendants to comply with the following terms of this Settlement Agreement:
 - a.** The number of adjudicated SIJ petitions of individuals on the Notification List, including the number of approvals, denials, outstanding RFEs, NOIDs, NOIRs, or revocations based on the status of each petition at the end of the 45-day reporting period.
 - b.** The number of adjudicated SIJ petitions of individuals on the Notification List for each identified and agreed upon timeframe above, including the number of approvals, denials, outstanding RFEs, NOIDs, NOIRs, or revocations based on the status of each petition at the end of the 45-day reporting period.
 - c.** The reason for any non-compliance with said timeframes.

except with respect to the continuing obligation not to reinstate the Reunification-Authority Requirement after other obligations of this Agreement have terminated as discussed in Section VIII, the Parties shall be deemed not to have waived, not to have modified, or not be estopped from asserting any additional defenses or arguments available to them. In such event (excluding the situation where the continuing obligation not to reinstate the Reunification-Authority Requirement after other obligations of this Agreement have terminated as discussed in Section VIII), neither this Agreement nor any draft thereof, nor any negotiation, documentation, or other part or aspect of the Parties' settlement discussions, nor any other document filed or created in connection with this settlement, shall have any effect or be admissible in evidence for any purpose in the Litigation or in any other proceeding, and all such documents or information shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and in any event only for the purposes of the Litigation.

VIII. TERMINATION OF OBLIGATIONS

- A.** The obligations of this Agreement shall automatically terminate at the same time as the Court's jurisdiction, except for the obligation not to reinstate the Reunification-Authority Requirement as described in Sections III.B-D above.

IX. RELEASES

- 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, by operation of any final judgment entered by the Court, shall have fully, finally, and forever released, relinquished, and discharged the Defendants of and from any and all of the Settled Claims, and the Plaintiffs and the Class Members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Defendants, and all of their past and present agencies, officials, employees, agents, attorneys, and successors. This Release shall not apply to claims that arise or accrue after the termination of this Agreement.
- B.** Nothing in this Agreement should be construed as establishing any right or interest in challenging an adverse SIJ petition adjudication, or any other DHS or USCIS action, decision, determination, order, form, instruction, training material, delay, or process or procedure, beyond those expressly provided herein or under law.
- C.** Nothing in this Agreement should be construed as affecting any Class Members' right or interest in challenging the adjudication of his or her individual I-360, I-485, or I-765, or challenging any related removal order.

Individual Class Members expressly maintain the right to challenge the adjudication of such petitions and orders.

- D.** In consideration of the terms and conditions set forth herein, Plaintiffs hereby release and forever discharge Defendants, and all of their past and present agencies, officials, employees, agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of action, claims, and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts, circumstances and subject matter that gave rise to the Action, including all claims that were asserted or that Plaintiffs could have asserted in the Action.
- E.** Considering the benefits that the Plaintiffs and 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 Agreement are fair, reasonable, and in the best interests of the Plaintiffs and Class Members; Plaintiffs have agreed that Defendants shall be released from the Settled Claims pursuant to the terms and provisions of this Agreement; and Plaintiffs have agreed to the dismissal with prejudice of this Action and all Settled Claims as defined in Section II.
- F.** Consequently, Plaintiffs and Defendants expressly waive all provisions, rights and benefits of California Civil Code § 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law). Section 1542 provides: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.
- G. Effectuation of Settlement.** The above releases do not include any release of claims to enforce the terms of this Agreement prior to termination of obligations under this Agreement as provided in Section VIII.
- H. No Admission of Wrongdoing.** 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, consistent with the Constitution and laws of the United States, and applicable regulations;
 2. 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 was 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 violation of or failure to comply with the Constitution, law, or regulations; and

3. 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 Agreement, in any other civil criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

X. RETENTION OF JURISDICTION

- A. This court retains exclusive jurisdiction over the Settlement Agreement for the purpose of enforcing any of its provisions and terms, and the Court's retention of such jurisdiction shall be noted in the dismissal of this action. The Agreement and the Court's exclusive jurisdiction to enforce the Agreement, both shall terminate automatically one (1) year following the Court's order approving Defendants' certification that they have fully adjudicated the Class Members' petitions in compliance with Sections III and V of the Agreement, as documented by Defendants' Compliance Reports to Plaintiffs and the Court. Plaintiffs reserve the right to request that the Court extend its exclusive jurisdiction over the Agreement should Defendants breach this Agreement after the Court's order approving Defendants' certification.
- B. The Parties agree to work cooperatively with one another and in good faith and agree to use their best efforts to effectuate the purposes of this Agreement and to resolve informally any differences regarding interpretation of and compliance with this Agreement prior to bringing such matters to the Court for resolution.
- C. The Parties shall have the right to seek from the Court relevant modifications of this Agreement to ensure that its purposes are fully satisfied, provided that any request for a modification has been preceded by good faith negotiations between the Parties. The Parties may agree in writing to modify the deadlines established in this Agreement without Court approval, but such writing must be lodged with the Court.

XI. ATTORNEYS' FEES, COSTS, AND EXPENSES

The Parties have agreed to the amount of \$242,000.00 for fees plus costs and expenses, pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.* The Parties have also agreed that counsel for Plaintiffs will contract with Epiq to complete the class-notice mailing. Defendants agree to reimburse Plaintiffs for Epiq's class-notice-mailing service, which Epiq has quoted at approximately \$7,500 total.

XII. ADDITIONAL PROVISIONS

- A. Best Efforts.** The Parties' counsel shall use their best efforts to cause the Court to grant Preliminary Approval of this Agreement and Settlement, and certify a settlement class, as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the Settlement on the stated terms and conditions, and to obtain Final Approval of this Agreement and Settlement.
- B. Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to providing Notice of the Preliminary Approval of the Agreement and Preliminary Approval and Fairness hearings are subject to approval and change by the Court or by the written agreement of the Parties' counsel, without notice to Class Members.
- C. Time for Compliance.** The dates described herein refer to calendar days, unless otherwise stated. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effective as if it had been performed on the day or within the period of time specified by or under this Agreement.
- D. Entire Agreement.** The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving the interpretation of this Agreement. Any amendment or modification of the Agreement must be in a writing signed by Plaintiffs, Plaintiffs' Counsel, and Defendants' Counsel, except with respect to the continuing obligation not to reinstate the Reunification-Authority Requirement after other obligations of this Agreement have terminated as discussed in Section VIII, which will occur automatically and need not be agreed to in writing.

- E. Advice of Counsel.** The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code § 1654 that uncertainties in a contract are interpreted against the party causing the uncertainty to exist is hereby waived by all Parties.
- F. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, and assigns.
- G. No Waiver.** The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.
- H. Requirement of Execution.** This Agreement shall be valid and binding as to the Class Members and Defendants upon (1) signature by Plaintiffs, (2) signature by authorized representatives of Defendants, and (3) signature as to form by an authorized representative of each of the law firms defined as Plaintiffs' Counsel, under the condition that the Agreement is approved by the Court.
- I. Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- J. Extensions of Time.** The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.
- K. Interpretation and Enforcement of This Agreement.** The Court shall have, and after Final Approval shall retain, jurisdiction to enforce, interpret, and implement this Agreement as set forth in Section X.
- L. Pending Litigation.** The Parties agree to jointly move to stay all litigation in the district court pending approval of the Agreement.
- M. Agency Approval.** The Agreement is subject to final approval by appropriate senior leadership at DHS, which could take up to 10 calendar days or longer. The Government will use its best efforts to expedite the approval process.
- N. Non-Waiver.** Nothing in the Agreement shall constitute a waiver of defenses that the Parties may have at law or in equity, including Impossibility of Performance, Impracticability of Performance, and Frustration of Purpose.

- O. Notices.** All notices to the Parties required by this Agreement shall be made in writing and communicated by email to the following addresses:

Class Counsel: CASIJClassAction@milbank.com

Linda Dakin-Grimm
Milbank LLP
2029 Century Park East, 33rd Fl.
Los Angeles, CA 90067
Telephone: (424) 386-4000

Andrea Ramos
Southwestern Law School
3050 Wilshire Boulevard
Los Angeles, CA 90010
Telephone: (213) 738-7922

Defendants or Defendants' Counsel:

James A. Scharf
150 Almaden Blvd., Suite 900
San Jose, California 95113
Telephone: (408) 535-5081

Katelyn Masetta-Alvarez
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-0120

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FOR AND ON BEHALF OF DEFENDANTS:

EXECUTED 8/17/21

/s/ James A. Scharf

James A. Scharf

Assistant United States Attorney

150 Almaden Blvd., Suite 900 San Jose, California 95113

Telephone: (408) 535-5081

/s/ Elizabeth R. Veit

Elizabeth R. Veit

Trial Attorney

United States Department of Justice

Office of Immigration Litigation

Telephone: (202) 598-0813

THEREFORE, all Parties enter into and execute this Agreement by signing, and agree that it shall take effect as of the Effective Date as noted above.

APPROVED AS TO FORM:

DATED: 8/17/21

Milbank LLP

Katherine Kelly Fell
Katherine Kelly Fell, Esq.

DATED: _____

SOUTHWESTERN LAW SCHOOL

Andrea Ramos, Esq.

AGREED TO BY PLAINTIFFS:

DATED: _____

A.O.

DATED: _____

A.S.R.

DATED: _____

L.C.

DATED: _____

R.M.

DATED: _____

I.Z.M.

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APPROVED AS TO FORM:

DATED: _____

Milbank LLP

Katherine Kelly Fell, Esq.

DATED: 8/17/2021

SOUTHWESTERN LAW SCHOOL

Andrea Ramos
Andrea Ramos, Esq.

AGREED TO BY PLAINTIFFS:

DATED: _____

A.O.

DATED: _____

A.S.R.

DATED: 8/17/2021

L.C. by A.R.
L.C.

DATED: 8/17/2021

R.M. by A.R.
R.M.

DATED: 8/17/2021

I.Z.M. by A.R.
I.Z.M.

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APPROVED AS TO FORM:

DATED: _____

Milbank LLP

Katherine Kelly Fell, Esq.

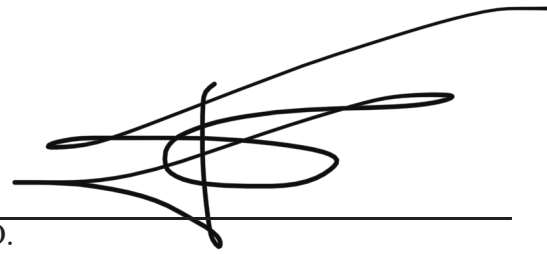
DATED: _____

SOUTHWESTERN LAW SCHOOL

Andrea Ramos, Esq.

AGREED TO BY PLAINTIFFS:

DATED: 8/16/2021



A.O.

DATED: _____

A.S.R.

DATED: _____

L.C.

DATED: _____

R.M.

DATED: _____

I.Z.M.

THEREFORE, all Parties enter into and execute this Agreement by signing, and agree that it shall take effect as of the Effective Date as noted above.

APPROVED AS TO FORM:

DATED: _____

Milbank LLP

Katherine Kelly Fell, Esq.

DATED: _____

SOUTHWESTERN LAW SCHOOL

Andrea Ramos, Esq.

AGREED TO BY PLAINTIFFS:

DATED: _____

A.O.

DATED: 8/17/2021

A.S.R.

A.S.R. by A.R.

DATED: _____

L.C.

DATED: _____

R.M.

DATED: _____

I.Z.M.

Addendum A

National Security. A noncitizen is *presumed* to be a national security enforcement and removal priority if:

- 1) he or she has engaged in or is suspected of engaging in terrorism or terrorism-related activities
- 2) he or she has engaged in or is suspected of engaging in espionage or espionage-related activities;¹ or
- 3) his or her apprehension, arrest, or custody is otherwise necessary to protect the national security of the United States.

In evaluating whether a noncitizen’s “apprehension, arrest, or custody is otherwise necessary to protect” national security, officers and agents should determine whether a noncitizen poses a threat to United States sovereignty, territorial integrity, national interest, or institutions. General criminal activity does not amount to a national security threat (as distinguished from a public safety threat) and is discussed below.

Public Safety. A noncitizen is *presumed* to be a public safety enforcement and removal priority if he or she poses a threat to public safety and:

- 1) he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the INA,² or
- 2) he or she has been convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization.

In evaluating whether a noncitizen currently “pose[s] a threat to public safety,” officers and agents are to consider the extensiveness, seriousness, and recency of the criminal activity. Officers and agents are also to consider mitigating factors, including, but not limited to, personal and family circumstances, health and medical factors, ties to the community, evidence of rehabilitation, and whether the individual has potential immigration relief available.

¹ For purposes of the national security enforcement priority, the terms “terrorism or terrorism-related activities” and “espionage or espionage-related activities” should be applied consistent with (1) the definitions of “terrorist activity” and “engage in terrorist activity” in section 212(a)(3)(B)(iii)-(iv) of the INA, and (2) the manner in which the term “espionage is generally applied in the immigration laws.

² This criterion tracks Congress’s prioritization of aggravated felonies for immigration enforcement actions. Whether an individual has been convicted of an aggravated felony is a complex question that may involve securing and analyzing a host of conviction documents, many of which may not be immediately available to officers and agents. Even when all conviction documents are available, whether a conviction is for an aggravated felony may be a novel question under applicable law. Accordingly, in deciding whether a noncitizen has been convicted of an aggravated felony for the purposes of this memorandum, officers and agents must have a good-faith belief based on either a final administrative determination, available conviction records, or the advice of agency counsel.

Officers are to base their conclusions about intentional participation in an organized criminal gang or transnational criminal organization on reliable evidence and consult with the Field Office Director (FOD) or Special Agent in Charge (SAC) in reaching this conclusion.

Particular attention is to be exercised in cases involving noncitizens who are elderly or are known to be suffering from serious physical or mental illness.