

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

----- -X
CAROLYN ROBB HOOTKINS, et al.,

Plaintiffs,

Case No. CV07-5696 (CAS)

- against -

Protected under F.R.E. 408

JANET NAPOLITANO, et al.,

Defendants.

----- -X

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 Janet Napolitano, Secretary of Homeland Security and Alejandro Mayorkas, Director of the United States Citizenship and Immigration Services (“USCIS”) (together, “Defendants”), by and through their attorneys, hereby enter into this Stipulation and Agreement of Settlement, and Release (the “Stipulation”), as of the Approval date as defined in paragraph 4.

WHEREAS:

A. Plaintiffs filed suit on behalf of themselves and all others similarly situated against Defendants in the United States District Court for the Central District of California on August 30, 2007, seeking class certification and declaratory and injunctive relief, and filed an Amended Complaint on March 20, 2008;

B. By Order of January 6, 2009, the Court granted Plaintiffs’ Motion for Class Certification in part and denied it in part;

C. By Order of April 28, 2009, the Court granted Plaintiffs' Motion for Summary Judgment in part and denied it in part, granting injunctive relief;

D. On October 28, 2009, President Barack Obama signed into law the Department of Homeland Security Appropriations Act of 2010, which included an amendment to 8 U.S.C. § 1151(b)(2)(A)(i) striking the words "for at least two years at the time of the citizen's death" from the second sentence, and providing other assorted relief. Pub. L. 111-83, § 568(c)-(e), 123 Stat. 2142, 2186-88 (2009). The amendments became effective immediately upon enactment, and apply to any visa petition or adjustment application pending on or after the date of enactment.

E. Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the Amended Complaint filed in the Action, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to 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.

F. 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 negotiating a settlement which is consistent with the interests of Plaintiffs, the Class, and all Class Members.

G. Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and in the interests of Plaintiffs, the Class, and all Class Members; have agreed that Defendants should be released from the Settled Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the dismissal of the Action with prejudice, after considering the substantial benefits that Plaintiffs, the Class, and all Class Members will

receive from settlement of the Action, the risks of litigation, and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

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 Defendants 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 Central District of California (docket no. CV07-5696).

2. "Class" means, for purposes of this settlement only, a Plaintiff class and subclass pursuant to Rule 23 of the Federal Rules of Civil Procedure as certified by the Court on January 6, 2009, comprising:

A. All aliens whose United States citizen spouse died before the couple's two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit; AND

B. All aliens who, within ninety days of admission to the United States as a nonimmigrant fiancé, married the petitioning United States citizen, and whose citizen spouse died before the couple's two-year wedding anniversary, so long as he or she can also demonstrate that the citizen

spouse filed an I-129F petition and a form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form I-129F petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

The class ceases to exist, and all membership in the Class ends, upon the termination of this Stipulation pursuant to paragraph 35.

3. "Class Member" means any Person included in the Class.

4. "Approval Date" means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 28 below.

5. "Plaintiff(s)" means Carolyn Robb Hootkins, Ana Maria Moncayo-Gigax, Suzanne Henriette De Mailly, Sara Cruz Vargas de Fisher, Raymond Lockett, Elsa Cecilia Brenteson, Pauline Marie Gobeil, Rose Freeda Fishman-Corman, Khin Thidar Win, Li Ju Lu, Purita Manuel Poindexter, Tracy Lee Rudl, and Dieu Ngoc Nguyen.

6. "Class Counsel" means Parrilli Renison LLC, 5285 S W Meadows Road, Suite 175, Lake Oswego, Oregon 97035; and Alan R. Diamante Law Offices, 523 W. Sixth Street, Suite 210, Los Angeles, California, 90014. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

7. "Defendants" means any and all Defendants, their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

8. "Settled Claims" means any and all actions, suits, claims, demands, rights, liabilities, and causes of action, of every nature and description, whether known or unknown, accrued or unaccrued, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, that were asserted or that could have been asserted or could be asserted in this Action in any forum, that Plaintiffs, the Class, the Class Members or any of them, or any of their heirs, representatives, attorneys, successors, assigns, and any person

they represent, in the past had, now have, or during the pendency of the Stipulation might have against Defendants or any claims, which regard, concern, relate to, refer to, arise out of, or are based upon, in any way: (a) the allegations, transactions, facts, matters, occurrences, representations, omissions, disclosures, statements, failure to disclose, or failure to act involved, set forth, referred to or that were, could be, or could have been asserted in the Action, including known and Unknown Claims as herein defined, and whether or not concealed or hidden; and (b) Defendants' defense of or settlement of the Action except that Plaintiffs and Class members may raise Settled Claims, where applicable, in removal proceedings following a denial of their applications for adjustment of status or in a petition for review arising from such removal proceedings.

9. "Settlement" means the settlement contemplated by this Stipulation.

10. As used herein, "Unknown Claims" shall mean any and all actions, suits, claims, demands, rights, liabilities, and causes of action relating to or arising from the allegations in the Action that Plaintiffs, the Class, or any of the Class Members do not know of or suspect to exist in their favor at the time of the release of Defendants, including but not limited to those that, if known by them, might have affected their agreement to the Settlement.

11. "Widows Guidance" means the December 2, 2009, USCIS Memorandum, entitled "Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children (REVISED)," which has been posted on the USCIS website.

II. RELEASE; SCOPE AND EFFECT OF RELEASE

12. This Stipulation shall be a full and final disposition of the Action with prejudice and of any and all Settled Claims as against all Defendants.

13. On the Approval Date, 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, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Defendants of and from any and all of the Settled Claims, and

Plaintiffs, the Class, and the Class Members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any Defendants.

III. PROCESSING OF CLASS MEMBERS' PETITIONS AND APPLICATIONS

14. USCIS will adjudicate Class Members' claims according to the Widow's Guidance. In particular:

A. Any Class Member's Form I-130 that is still pending with USCIS is converted to, and will be adjudicated as, a widow(er)'s Form I-360.

B. If USCIS denied the Form I-130, the Form I-130 is reopened, as of December 2, 2009, and converted to a Form I-360.

C. Any pending or reopened Form I-130 that is converted to a Form I-360 will be adjudicated under 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83. The Class Member must establish that he or she was married to the deceased citizen when the deceased citizen died, that their marriage was bona fide, that they were not divorced or legally separated when the deceased citizen died, and that the Class Member has not remarried. All other requirements for approval of a visa petition apply to the adjudication of the case, including 8 U.S.C. §§ 1154(c), 1154(g) and 1255(e)(3), if applicable.

D. If, as in the case of Liju LU and Class Members represented by her, a Form I-130 was approved, but the approval was revoked under 8 C.F.R. § 205.1(a)(3)(i)(C), the approval is deemed reinstated as of October 28, 2009.

E. USCIS will also adjudicate any Class Member's Form I-485 in light of 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83, if the Class Member is still in the United States and USCIS still has jurisdiction of the Form I-485.

If USCIS had denied the Form I-485, the Form I-485 is reopened, as of December 2, 2009.

F. For a Class Member in the subclass as defined in paragraph 2(B) (relating to aliens admitted as K nonimmigrants) there will be no Form I-130 if the couple married within 90 days of the K-1's admission. In this situation, for purposes of adjudicating of a Form I-485 that was pending on October 28, 2009, the K-1 nonimmigrant, and any K-2 children, will be deemed to be the beneficiaries of an approved Form I-360.

G. If a Class Member had abandoned his or her adjustment application by departing the United States without a grant of advance parole, or by leaving with a grant of advance parole but not returning before the expiration of the advance parole period, the approval of the Class Member's Form I-360 will permit the Class Member to apply for an immigrant visa.

H. For purposes of 8 U.S.C. § 1182(a)(9)(B), a Class Member shall be deemed not to have accrued any unlawful presence within the United States on or before October 28, 2009.

I. Any Class Member who was removed from the United States will be required to file an individual Form I-212, Application for Permission to Reapply for Admission, to waive inadmissibility under 8 U.S.C. § 1182(a)(9)(A). The Form I-212 will be accepted without regard to the length of time the Class Member has remained outside of the United States.

J. All converted Form I-360 Self-Petitions will carry the filing date of the Form I-130 Petition originally filed. As a result, under 8 U.S.C. § 1151(f)(1), any unmarried sons or daughters of Class Members who were under 21 years of age at the time the Form I-130 Petition was filed will still be considered to be under 21 years of age, for purposes of determining whether they qualify as derivative beneficiaries of the Form I-360 Self-Petition.

15. If USCIS denies a Class Member's converted Form I-360, the Class Member may seek administrative appeal or judicial review to the extent permitted by law.

16. If USCIS denies a Class Member's Form I-485, then, unless the alien is in a lawful nonimmigrant status, or is not entitled to a removal proceeding, USCIS will initiate a removal proceeding. The Class Member may apply for adjustment of status before the immigration judge, unless the immigration judge lacks jurisdiction under 8 C.F.R. § 1245.2(a)(1).

IV. DISSEMINATION OF INFORMATION

17. On December 2, 2009, USCIS issued the Widow's Guidance to inform all relevant staff at USCIS District Offices and Service Centers about their responsibilities under section 568(c) of Public Law 111-83. This written guidance is also posted on the USCIS website.

18. USCIS also provided a copy of the December 2, 2009, Widow's Guidance to the U.S. Department of State so that the U.S. Department of State can inform embassies and consulates overseas regarding section 568(c) of Public Law 111-83 and its effect on Class Members who may seek immigrant visas, rather than adjustment of status.

19. Plaintiffs agree that nothing in this Stipulation shall limit Defendants' authority to promulgate regulations, issue policy directives and guidance, or to take other appropriate action, as necessary, without any notice to Plaintiffs, concerning the processing of related applications including, but not limited to, applications for adjustment of status and affidavit of support requirements.

V. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION

20. 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 that the terms of this Stipulation shall be incorporated into the Order of the Court approving the Settlement.

21. 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 22-24 has occurred.

22. Starting from the Approval 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 14-18, the initiating party shall promptly notify the other 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.

23. During the 60 days following the completion of the appropriate process outlined in paragraph 22, 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.

24. Should the parties be unable to resolve any issues raised between them, after exhausting all of the applicable procedures in paragraph 22-23, such issues must be raised before a Magistrate Judge of the Central District of California upon whom 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.

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

25. 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 contemplated by this Stipulation, *vacatur* of the injunction entered by the Court on April 28,

2009 as superseded by section 568 of the Department of Homeland Security Appropriations Act of 2010, and entry of a Preliminary Approval Order, substantially in the form appended hereto as Exhibit A. Such Preliminary Approval Order will include 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 Court's preliminary approval of this Stipulation (A) both parties will post the Notice to the Class and this Stipulation in appropriate places on the USCIS and Parrilli Renison public websites, (B) Class Counsel will provide the Notice to the Class and this Stipulation for posting on the American Immigration Lawyers Association website, in addition to a number of popular websites utilized by immigrants and immigration lawyers, and including the website for the non-profit group Surviving Spouses Against Deportation, and (C) Defendants will distribute the Notice to the Class and this Stipulation through the USCIS Community Relations Program to the existing network of community-based and non-profit organizations which provide advice and assistance to immigrants.

26. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter Final Judgment, vacating the injunction and dismissing all claims against Defendants with prejudice, substantially in the form appended hereto as Exhibit B.

27. Within 10 days following the Court's entry of the Final Judgment, the Parties will publish a Notice of Final Settlement Agreement according to the methods set forth in paragraph 25. 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.

VI. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

28. This Stipulation will be in effect as of 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 A; (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 B.

29. In the event that the District Court's approval of the Stipulation or the Final Judgment referenced in paragraph 28(C) is voided on appeal, vacated, or terminated, the parties' good-faith adherence to the terms of this Stipulation prior to said voidance, *vacatur* or termination shall not be considered unlawful.

30. 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 Court's declining to enter the Preliminary Approval Order or modification of that Preliminary Approval Order in any material respect; (B) the Court's declining to approve the Settlement embodied in this Stipulation, or any material part of it; (C) the Court's declining to enter the Final Judgment or modification of the Final Judgment in any material respect; (D) the date upon which the Final Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or the United States Supreme Court; or (E) the date upon which an Alternative Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or by the United States Supreme Court.

31. 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.

VII. TERMINATION OF OBLIGATIONS

32. The obligations set forth in this Stipulation shall terminate after two (2) years from the Approval Date without further action by the Court.

VIII. NO ADMISSION OF WRONGDOING

33. 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 Defendants to enforce the laws of the United States against Class Members notwithstanding the terms of this Stipulation, consistent with the Constitution, laws of the United States, and applicable regulations;

B. shall not be offered or received against Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Defendant of the truth of any fact alleged by 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 Defendants; or any admission by Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and

C. shall not be offered or received against 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.

IX. ATTORNEYS' FEES

34. Within 120 days of entry of a final judgment in this case approving this Stipulation, Defendants will deliver to Class Counsel the sum of \$125,000, in settlement of all

claims for attorneys' fees and costs that could have been or will be claimed in this litigation. This total includes \$4,787.80 in costs taxable under 28 U.S.C. § 1920. Defendants shall bear any costs incurred in connection with notifying the class of the terms and conditions of this Stipulation.

X. ADDITIONAL PROVISIONS

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

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

37. 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.

38. 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.

39. 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.

40. 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.

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

42. 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.

43. 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.

44. 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, *vacatur* of the injunction entered by the Court on April 28, 2009, 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

THE DEFENDANTS

BY: 

BY: 

Dated: Jan. 6, 2010

Jan. 19, 2010