

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.

- d. A statement from USCIS that it has not applied the Reunification-Authority Requirement to any SIJ petitions since the return of the executed Settlement Agreement.
 2. The Notice of Compliance Report shall include the following information for Existing Class Members identified by Plaintiffs under Section IV.E. of this Agreement: total number identified; applicable deadline timeframe for adjudication per the Agreement; beginning and endpoint of said allotted adjudication time frame; number of approvals, denials, outstanding RFEs, NOIDs, NOIRs, or revocations; date of adjudication.
 3. Plaintiffs, through Class Counsel, shall meet and confer with Defendants regarding the Notice of Compliance Report, submit a response to any Compliance Report within five (5) business days of service, and allow Defendants five (5) business days to respond to any concerns Plaintiffs raise in their response. If the Parties are unable to resolve any issues related to the Compliance Report thereafter, either party may request a hearing with the Court.
 4. Defendants will promptly notify Class Counsel of any known violation of the Settlement Agreement.

VII. SETTLEMENT BASED ON COURT APPROVAL OF TERMS

- A. In the event that the Court does not approve the Settlement Agreement or certify the settlement class, the Parties' good-faith adherence to the terms of this Settlement prior to said nonapproval, reversal, vacatur, or termination shall not be considered unlawful.
- B. This Settlement is subject to and contingent upon certification by the Court of a Settlement Class under Rule 23(c) of the Federal Rules of Civil Procedure and Court approval under Rule 23(e) of the Federal Rules of Civil Procedure.
- C. Except as otherwise provided herein, in the event the Agreement is terminated or modified in any material respect or fails to become effective for any reason, 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, then the Agreement shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to this Agreement 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 Agreement; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In the event that the Agreement is terminated or modified in any material respect,

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.

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.

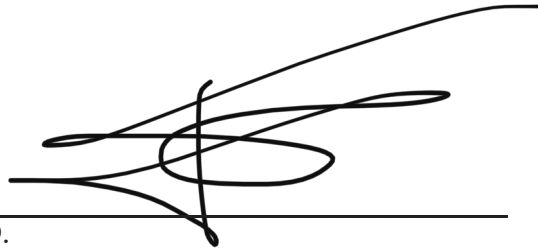
DATED: _____

SOUTHWESTERN LAW SCHOOL

Andrea Ramos, Esq.

AGREED TO BY PLAINTIFFS:

DATED: 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.

Exhibit 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT for the NORTHERN DISTRICT OF CALIFORNIA

If you received a juvenile court order from a California Juvenile Court and then filed a Special Immigrant Juvenile (SIJ) petition after turning 18 years old, you may be part of a federal class action settlement:

A.O., et al v. Jaddou, et al,
 United States District Court for the Northern District of California
 Case Number 19-cv-6151-SVK

MORE INFORMATION: <https://www.milbank.com/en/casijclassaction.html>

IMPORTANT

PLEASE READ THIS NOTICE CAREFULLY
 THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO OBJECT TO THE SETTLEMENT

A federal court has authorized this notice. This is not an advertisement. You are not being sued or restrained.

This notice is to inform you of a proposed settlement of a class action lawsuit in the United States District Court for the Northern District of California, against Ur M. Jaddou, Director of the U.S. Citizenship and Immigration Services; Alejandro Mayorkas, Secretary of the U.S. Department of Homeland Security; Terri Robinson, Director of the National Benefits Center, U.S. Citizenship and Immigration Services; the U.S. Department of Homeland Security; and the U.S. Citizenship and Immigration Services (the “Government”).

YOUR LEGAL RIGHTS* AND OPTIONS IN THIS SETTLEMENT**

<p>DO NOTHING</p>	<p>By doing nothing, you remain in the Class and benefit from the terms of the Settlement Agreement (“Settlement Agreement” or “Agreement”).</p> <p>There are no rights to “opt out” or exclude yourself from the Settlement Agreement. The proposed Settlement Agreement will bind Class Members.</p>
<p>COMMENT OR OBJECT BY [41 DAYS FOLLOWING PRELIMINARY APPROVAL; 35 DAYS AFTER NOTICE]</p>	<p>Write to the Court about why you do, or do not, like the proposed Settlement.</p>
<p>ATTEND A HEARING ON [DATE OF FAIRNESS HEARING]</p>	<p>Ask to speak to the Court about the fairness of the Settlement if you filed a request to do so by [41 days following Preliminary Approval (35 days after notice)].</p> <p><i>(The date and time of the Final Approval Hearing is subject to change by Court Order and without further notice to the Class. See Question Nos. 6 and 9 below.)</i></p>

** These rights, options, and the deadlines to exercise them are explained in this notice.*

*** The Court overseeing this case still has to decide whether to approve the Settlement.*

1. What is this notice and why should I read it?

This notice is to inform you of a proposed Settlement of a class action lawsuit entitled *A.O. et al. v. Renaud, et al.*, Case No. 19-cv-06151-SVK, brought on behalf of the Settlement Class, and pending in the United States District Court for the Northern District of California. You do not need to live in California to benefit under the Settlement. The Court has granted preliminary approval of the Settlement and has set a Final Approval Hearing to take place on [Date of Fairness Hearing] at [enter court location or Zoom information], to determine if the Settlement is fair, reasonable, and adequate. **Note:** this date and time are subject to change by Court Order and may change without further notice to the Class.

This notice describes the proposed Settlement. Your rights and options – **and the deadlines to exercise them** – are explained in this notice. If you are a Settlement Class Member your legal rights are affected regardless of whether you act.

2. What is a class action lawsuit and what is this lawsuit about?

In a class action, one or more people, called Class Representatives, sue for themselves and for people who have similar claims. The people who brought the case – and all the Settlement Class Members like them – are called Plaintiffs. The people or entities they have sued are called Defendants, or the “Government” here. This case is a federal case. The case name is *A.O. et al. v. Jaddou, et al.*, and the case number is 19-cv-06151-SVK. The court in charge of this case is the United States District Court for the Northern District of California, the Honorable Susan Van Keulen presiding.

This class action involves claims by the Plaintiffs that the Government imposed a new requirement on eligibility for SIJ petitions and, as a result, did not approve the SIJ petitions of petitioners who received juvenile court orders from a California Juvenile Court under Cal. Welfare & Inst. Code §§ 300 and 303, on the ground that the California Juvenile Court did not have jurisdiction or authority to “reunify” the petitioner with his or her parents (the “Reunification Authority Requirement”). A federal court has temporarily ordered the Government to stop imposing the alleged new requirement on SIJ petitioners who filed SIJ petitions after they turned 18 and before turning 21. However, before the Court made a final determination in this lawsuit regarding whether the Government’s conduct is lawful or unlawful, Plaintiffs and the Government reached this Settlement. This Settlement does not seek any money from the Government on behalf of the Class, except to reimburse Plaintiffs’ attorneys for their fees and costs spent in bringing this lawsuit.

This class action differs from a similar SIJ-related class action, *J.L. v. Cuccinelli*, Case No. 18-cv-4914-NC. The class members in *J.L. v. Cuccinelli* received guardianship orders under Cal. Prob. Code § 1510.1 after turning 18 but before turning 21; Settlement Class Members in *A.O. v. Jaddou* received dependency orders under Cal. Welfare & Inst. Code §§ 300 and 303. If you were a class member in *J.L. v. Cuccinelli*, you are **not** a Settlement Class Member in this Settlement and do not benefit under the terms of this Settlement.

3. How do I know if I am part of the Settlement Class?

The Court has certified the following class (the “Class” or “Settlement Class”): “California children who have been declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code and who have received or will receive denials of their SIJ petitions on the grounds that the state court cannot reunify them with their parents.” If you are one of those SIJ petitioners, you are participating in the lawsuit.

You are part of the Class covered by the Settlement (“Class Member” or “Settlement Class Member”) if you received a dependency order under § 300 from the California Juvenile Court and subsequently filed an SIJ petition or will file an SIJ petition after turning 18 years old but before turning 21 years old that: (1) has not

been adjudicated; (2) was or will be denied (or you received a Notice of Intent to Deny (“NOID”)); (3) has received or will receive a Request for Evidence (“RFE”); or (4) was revoked or will be revoked (or you received or will receive a Notice of Intent to Revoke (“NOIR”)) on the basis that the California Juvenile Court lacked jurisdiction to issue the SIJ Findings accompanying that dependency order because it could not reunify you with a parent. *Please note that, as of the date of this Notice, USCIS no longer requires a state court to have jurisdiction to reunify the SIJ petitioner with his or her allegedly unfit parent.*

The Class has two subclasses: “Existing Class Members” and “Future Class Members.” These two subclasses are entitled to different benefits under the Settlement. You are an Existing Class Member if you (1) were declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code on or before October 15, 2019; (2) either (a) filed an SIJ petition with USCIS after turning 18 years old but prior to your 21st birthday, between January 1, 2017 and October 15, 2019, or (b) had turned 18 years old but had not yet turned 21 years old and were eligible to file an SIJ petition between January 1, 2017 and October 15, 2019 but did not file an SIJ petition because you believed that it would be denied due to the state court’s lack of parental-reunification authority; and (3) your SIJ petition has not been approved as of the Effective Date of the Settlement Agreement. You are a “Future Class Member” if you: (1) have been or will be declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code; (2) filed or will file an SIJ petition after October 15, 2019; (3) had or will have turned 18 years old but had not or will have not turned 21 years when you file(d) your SIJ petition; and (4) receive a denial of your SIJ petitions on the ground that the state court did not have jurisdiction or authority to reunify you with your parents.¹

The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice, voice their support or opposition to final approval of the Settlement, and explain how those in the Settlement Class may obtain the relief offered by the Settlement. If the Settlement does not receive final approval by the Court, or the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no Settlement and no certification of the Settlement Class.

4. Why is there a settlement?

The Court has not decided in favor of either side in this case. The Government denies all allegations of wrongdoing. The Government is settling in order to avoid the substantial expense, inconvenience, and distraction of further protracted litigation, including trial and appeal. Plaintiffs and their attorneys believe that the Settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the expense and delay of pursuing the case through trial and any appeals.

¹ Because USCIS no longer requires that a state court have jurisdiction to reunify an SIJ petitioner with his or her allegedly unfit parent, the Government does not anticipate that any Future Class Members currently exist. If USCIS changed its policy regarding parental-reunification authority or if USCIS erroneously denies an SIJ petition based upon a California Juvenile Court’s lack of parental-reunification authority, then the Future Class Member subclass would apply. However, USCIS has agreed as part of the Settlement not to reinstate the Reunification Authority Requirement for SIJ petitioners who have a court order from a California juvenile court; therefore USCIS does not anticipate the existence of Future Class Members in the future.

5. What does the settlement provide?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at <https://www.milbank.com/en/casijclassaction.html> by contacting Class Counsel (*see* Question No. 7 for contact information), by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of Court for the United States District Court for the Northern District of California, San Jose Division, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT PROCESS.

Pursuant to the Settlement Agreement, the Government will not impose the requirement that a state court have the authority to place a Person² in the custody of his or her parent(s) and/or the authority to order the reunification of a Person with her or her parent(s) in order to make a qualifying determination of whether the Person’s reunification with one or both parents is viable on the basis of abandonment, abuse, or neglect, for the purposes of eligibility for SIJ. Accordingly, pursuant to California Welfare and Institutions Code § 300 and California Civil Procedure Code § 155, the Juvenile Division of the California Superior 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 render 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 8 U.S.C. § 1101(a)(27)(J) (the “SIJ Statute”). A Person is not disqualified from 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 for SIJ. Further, pursuant to California Welfare and Institutions Code §§ 300 and 303, a California Juvenile Court has the jurisdiction and 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.

The Settlement Agreement requires the Government to adjudicate Settlement Class Members’ SIJ petitions according to the following terms:

- (1) The Defendants must adjudicate all SIJ petitions of Existing Class Members on the Notification List or Existing Class Members identified to Defendants pursuant to the process described in (2) below, in accordance with the SIJ Statute and the Agreement, according to the following schedule:
 - a. Within 45 days of the Effective Date³ or within 45 days of Plaintiffs notifying Defendants of an Existing Class Member, Defendants will reopen and readjudicate any SIJ petitions of Existing

² “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.

³ “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.

Class Members that were previously revoked or denied on the basis of the Reunification Authority Requirement.⁴

- b. Defendants will adjudicate pending SIJ petitions of Existing Class Members within 45 days of the Settlement's Effective Date.
 - c. 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.
- (2) The SIJ petitions of individuals (i) who are Existing Class Members, (ii) who receive this notice directly, and (iii) whose SIJ petitions are pending or were revoked or denied based on the Reunification Authority Requirement, will be automatically adjudicated according to the schedule set forth in (1) above.
- a. If you are an Existing Class Member whose SIJ petition is pending or was revoked or denied based on the Reunification Authority Requirement but you did not directly receive this notice, please contact Class Counsel at CASIJClassAction@milbank.com as soon as possible. Class Counsel has 45 days following preliminary approval of the Settlement to identify to Defendants any additional Existing Class Members that do not appear on the Notification List.
 - b. If you are an Existing Class Member (i) who 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, please contact Class Counsel at CASIJClassAction@milbank.com as soon as possible. Defendants will accept a petition filed before the expiration of 90 days after the Effective Date from any Existing Class Member meeting this description, and 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.
- (3) The processing times in the 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.

⁴ "Reunification Authority Requirement" is defined in the Settlement as the requirement that a state court 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.

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 adjudicate Existing Class Members' SIJ petitions within 45 days of the Effective Date, Defendants will continue to abide by the terms of the Court's Preliminary Injunction, ECF No. 67, for the individuals whose SIJ petitions remain outstanding until USCIS has adjudicated their SIJ petition(s).
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.

- (4) For any Existing 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. This provision also 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.
- (5) USCIS has identified three Class Members, 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 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.
- (6) SIJ Petitions of Existing 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.
- (7) USCIS will not issue any general RFEs asking that an Existing 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 Existing Class Members ineligible for approval of his or her SIJ petition specifically based on the SIJ Petitioner's age, shall not apply to Existing Class Members.

- (8) 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 the Agreement. Consistent with USCIS's best practices, USCIS will list all grounds for issuance in the one RFE, NOID, or NOIR.
- (9) For denials issued because an Existing 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.
- (10) Upon the Effective Date of the Settlement Agreement, the preliminary injunction will dissolve according to its terms. However, in order to effectuate the Settlement Agreement, for a period of 45 days beginning on the Effective Date ("45 Day Period"), Defendants will continue to abide by the terms of the Court's Preliminary Injunction, Dkt. No. 67.
- (11) 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.
- (12) 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.
- (13) 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 the Agreement and must cite to the 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 the Agreement and must cite to the 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 below circumstances. 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.

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 provisions but are nonetheless national security or public safety risks. 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.

(14) 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.

(15) 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 Existing 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 Existing 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 Existing 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.

6. What are my rights as a member of the Settlement Class?

If you believe you are a member of the Settlement Class and you have a final removal order or are in removal proceedings, you should contact Class Counsel **immediately**. (See Question No. 7 for contact information.)

If you **are** satisfied with the proposed Settlement, you do not have to do anything.

Even if you **are not** satisfied with the proposed Settlement, you do not have the right to opt out of the settlement.

If you **are not** satisfied with the proposed Settlement, you **may object** to the Settlement or Class Counsels’ request for fees by submitting your objection in writing to the Court. Specifically, you can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval, this lawsuit will continue. If that is what you want to happen, you must object.

Any **objection** to the proposed Settlement must be in writing. All written objections and supporting papers must (a) clearly identify the case name and number (*A.O. et al. v. Jaddou, et al.*, Case No. 19-cv-06151-SVK), (b) include the Settlement Class Member’s Name, (c) include the Settlement Class Member’s current address and telephone number, or current address and telephone number of the Settlement Class Member’s legal representative, and (d) include an explanation of why the Settlement 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. All written objections and supporting papers must then be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Jose Division, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections must be filed or postmarked on or before **[35 days following the Notice Date]**. **Note:** 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.

If you file a timely written objection that complies with the above-mentioned requirements, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. The Final Approval Hearing is scheduled for **[Date of Fairness Hearing]** at **[insert Zoom information or courthouse location]** to determine if the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for attorneys’ fees. **Note:** this date and time are subject to change by Court Order and may change without further notice to the Class. If you appear through your own attorney at the Final Approval Hearing, you are responsible for hiring and paying that attorney.

If, after the hearing, the Court rejects the Settlement Agreement, the Parties will continue to litigate this dispute in front of the Court. If that happens, there is no guarantee that: (1) the Court will rule in favor of the

Class Members; (2) a favorable Court decision, if any, would be as favorable to the Class Members as this Settlement; or (3) any favorable Court decision would be upheld if the Government filed an appeal.

7. Who represents the Settlement Class?

Class Representatives: For purposes of the Settlement, the Court has appointed Plaintiffs A.S.R., A.O., L.C., R.M., and I.Z.M. to serve as the class representatives.

Class Counsel: The Court has decided that the law firm of Milbank, LLP and the Southwestern Law School Immigration Law Clinic are qualified to represent you and all Class Members in this case. These lawyers are called Class Counsel. They are experienced in handling similar cases. If you have any questions about this case, you may call 212-530-5000 to speak with one of the lawyers handling the case or email CASIJClassAction@milbank.com. More information about Class Counsel, their practice, and their lawyers' experience is available at www.milbank.com and www.swlaw.edu.

From the beginning of the case in August 2019 to the present, Class Counsel has not received any payment for their services in prosecuting the case or obtaining the Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. Class Counsel will seek an award of attorneys' fees and actual expenses (including court costs) pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 *et seq.*, which authorizes payment by the Government of attorneys' fees and costs for successful litigation against the Government in the federal courts. Class Counsel will seek final approval of the Settlement on behalf of all Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

8. What is the effect of final settlement approval?

If the Court grants final approval of the Settlement, Plaintiffs agree that they will dismiss with prejudice their claims in the Action against the Government.

The Court will retain exclusive jurisdiction over the Settlement Agreement for the purpose of enforcing any of its provisions and terms, and the Court's retention of jurisdiction shall be noted in the dismissal of this action. The Court's exclusive jurisdiction to enforce the Agreement 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 the Agreement.

9. When and where will the Court hold a hearing on the fairness of the Settlement?

The Final Approval Hearing is scheduled for [Date of Fairness Hearing] at [insert courthouse location or Zoom information] to determine if the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for attorneys' fees. **Note:** this date and time are subject to change by Court Order and may change without further notice to the Class.

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. If you have filed an objection to the Settlement, the Court has the right to require your attendance at the Final Approval Hearing. You will be contacted by the Court or by Class Counsel if the Court requires your appearance. If you intend to appear at the Final Approval Hearing through your own attorney, your attorney will need to file a notice of intent to appear with the Court. If you appear through your own attorney at the Final Approval Hearing, you are responsible for hiring and paying that attorney.

10. Where do I get additional information?

This notice provides only a summary of the matters relating to the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at <https://www.milbank.com/en/casijclassaction.html>, by contacting Class Counsel (see Question No. 7 for contact information), by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of Court for the United States District Court for the Northern District of California, San Jose Division, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

If you would like additional information, you can contact Class Counsel (see Question No. 7 above).

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH QUESTIONS ABOUT THE SETTLEMENT

Exhibit 2

NOTICE OF FINAL SETTLEMENT FOR SPECIAL IMMIGRANT JUVENILE (SIJ) PETITIONERS WITH CALIFORNIA JUVENILE COURT DEPENDENCY ORDERS

A.O., et al v. Jaddou, et al., U.S. District Court for the Northern District of California, Case No. 19-cv-6151-SVK

TO: California children who have been declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code and who have received or will receive denials of their SIJ petitions on the grounds that the state court cannot reunify them with their parents.

There are two types of Class Members: Existing Class Members and Future Class Members.

You are an Existing Class Member if (Scenario #1):

1. You received a dependency order under § 300 of the California Welfare and Institutions Code from a California Juvenile Court on or before October 15, 2019; **and**
2. You filed an SIJ petition after you had turned 18 years old but before you had turned 21 years old; **and**
3. Your SIJ petition was filed between January 1, 2017 and October 15, 2019; **and**
4. Your SIJ petition:
 - a. has not been adjudicated; **or**
 - b. has been issued a Request For Evidence (RFE), Notice of Intent to Deny (NOID) or Notice of Intent to Revoke (NOIR) where at least one of the grounds in the NOID, RFE, or NOIR was that the California Juvenile Court that issued the SIJ Findings accompanying the dependency order lacked jurisdiction to make a qualifying determination that you could not be reunified with your parent(s) because it did not have the authority to reunify you with that parent (the “Reunification Authority Requirement”); **or**
 - c. you received a denial or a revocation of your SIJ petition based on the Reunification Authority Requirement.

You are also an Existing Class Member if (Scenario #2):

1. You received a dependency order, before turning 21 years old, under § 300 of the California Welfare and Institutions Code from a California Juvenile Court on or before October 15, 2019; **and**
2. You were between 18 years old and 21 years old at any point between February 26, 2018 and October 15, 2019; **and**
3. You did not file an SIJ petition between February 26, 2018 and October 15, 2019 because of the Reunification Authority Requirement.

You are a Future Class Member if:

1. You have been or will be declared dependent on a juvenile court under Section 300 of the California Welfare and Institutions Code; **and**
2. You filed or will file an SIJ petition after October 15, 2019; **and**
3. You were or will be 18, 19, or 20 years when you file(d) your SIJ petition; **and**
4. You receive a denial of your SIJ petition based on the Reunification Authority Requirement.¹

You do not need to live in California to benefit under the Settlement.

You are hereby notified that on [REDACTED], the Honorable Susan Van Keulen of the U.S. District Court for the Northern District of California approved a settlement of the claims brought on your behalf in this lawsuit.

Background: This class action lawsuit alleged that U.S. Citizenship and Immigration Services (USCIS) acted contrary to law by imposing a new requirement for SIJ eligibility that required the California Juvenile Court to have the authority to reunify SIJ petitioners with their parent(s) in order to make a qualifying determination that reunification with that parent(s) was not viable under the SIJ statute, and then denied SIJ petitions on that basis for petitioners over the age of 18. The Parties later reached a settlement. The Plaintiffs are represented by Milbank LLP and the Southwestern School of Law Immigration Clinic (collectively, “Class Counsel”).

Description of Settlement Agreement (Agreement): The following description is only a summary of the key points in the Agreement. Information on how to obtain a copy of the full Agreement is provided after this summary.

1. USCIS will no longer impose the Reunification Authority Requirement.
2. USCIS will adjudicate the SIJ petitions of Existing Class Members that meet the criteria in Scenario #1 above within 45 days of final approval of the Settlement Agreement (“Effective Date”).

¹ USCIS represents that it is no longer applying the Reunification Authority Requirement and has agreed not to reinstate it for Class Members as part of the Settlement.

3. For 90 days following the Effective Date, USCIS will accept the SIJ petition of a Scenario #2 Existing Class Member if such class member obtained a SIJ Findings order between February 26, 2018 and October 15, 2019, but did not file a SIJ petition because of the Reunification Authority Requirement, and has since turned 21 years old. Such petition will not be denied based on the fact that the Existing Class Member turned 21 years old after February 26, 2018.
4. The following terms apply for adjudicating Class Members' SIJ petitions:
 - (1) For any Existing Class Member who has already received an RFE, NOID, NOIR, denial, or revocation of their SIJ petition (collectively, "Negative Action Notice"), USCIS shall not issue any new Negative Action Notice for any ground that could have been but was not previously raised in the earlier Negative Action Notice.
 - (2) Existing Class Members' SIJ petitions with Negative Action Notices based solely on the Reunification Authority Requirement will be adjudicated in accordance with the Agreement and will be favorably adjudicated, if otherwise approvable.
 - (3) USCIS may issue Negative Action Notices based on changes to factual circumstances that occurred after the date of the previously issued Negative Action Notice. USCIS will not issue any general RFEs asking that an Existing Class Member affirmatively identify any change in circumstance.
 - (4) If any Existing Class Member's SIJ petition was denied because the petitioner failed to respond to an RFE, NOID, or NOIR issued based in whole or in part on the Reunification-Authority Requirement, the petition will be reopened and readjudicated in accordance with the Agreement.
 - (5) For any Existing Class Member whose SIJ petition remains pending without any action, USCIS shall adjudicate the petition in accordance with the law and the Agreement.
 - (6) USCIS shall not issue a Notice to Appear to any Existing Class Member whose SIJ petition was denied solely because of the Reunification Authority Requirement until USCIS has fully re-adjudicated the SIJ petition.
5. For 45 days after the Effective Date—or, for Existing Class Members whose SIJ petitions were previously revoked or denied based on the Reunification-Authority Requirement, until such SIJ petition has been reopened and re-adjudicated in accordance with the Agreement—Defendants will not initiate removal proceedings or remove any Existing Class Member whose SIJ petition was denied based on the Reunification Authority Requirement, and will provide Class Counsel 14 days' notice before taking any adverse adjudicatory or enforcement actions against such Existing Class Member. Defendants will provide 14 days' notice to Class Counsel before initiating removal or removing any Existing Class Member whose SIJ petition remains pending after 45 days following the Effective Date.
6. For Class Members in Removal Proceedings, ICE will join, or, alternatively, will not oppose, any Class Member's Motion to Reopen Removal Proceedings, except in certain limited circumstances described in full in the Agreement. Should the Class Member prefer to simultaneously file a Motion to Reopen Removal Proceedings and a Motion to Terminate Removal Proceedings Without Prejudice, ICE will join, or, alternatively, will not oppose the motions. The 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 and must cite to the Settlement Agreement in his or her Motion. Some exceptions may apply to this provision, which are explained in further detail in the Agreement.
7. For Class Members who have submitted Applications to Register Permanent Residence or Adjust Status (I-485s) and/or Applications for Employment Authorization (I-765s), USCIS shall reopen all of those denied in conjunction with the denial of Class Members' SIJ petitions within 5 days of final adjudication of the Class Members' SIJ petitions. If the I-485s or I-765s were denied due to a denied SIJ petition based on the Reunification-Authority Requirement, there are procedures and a schedule set forth in full in the Agreement for adjudication of such I-485s and I-765s.
8. Reporting: USCIS periodically will file Compliance Reports identifying actions taken to comply with the Agreement until USCIS has completed adjudication of all Existing Class Members' SIJ petitions.
9. Release of claims: Class Members release the Government from all Settled Claims.
10. Enforcement: As noted in the Agreement, the district court retains exclusive jurisdiction over the Agreement.

For Further Information: You should read the entire Agreement to understand it fully. Copies of the Agreement may be obtained: (1) from the USCIS website (www.uscis.gov); (2) from Class Counsels' website <https://www.milbank.com/en/casijclassaction.html>; (3) by contacting Class Counsel at CASIJClassAction@milbank.com or 212-530-5000; (4) by accessing the Court docket in this case, for a fee, at <https://ecf.cand.uscourts.gov>; or (5) by visiting the Clerk of Court for the U.S. District Court for the Northern District of California, San Jose Division, business days from 9:00 a.m. to 4:00 p.m.

Exhibit 3

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16 *Attorneys for Defendants*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 A.O. *et al.*, on behalf of themselves and all) CASE NO. 19-CV-6151-SVK
others similarly situated,)
21 Plaintiffs,) DEFENDANTS' 55-DAY "NOTICE OF
22 v.) COMPLIANCE" REPORT
23 UR M. JADDOU, Director, United States)
24 Citizenship and Immigration Services, *et*)
al.,)
25 Defendants.)

27 Defendants submit the below "Notice of Compliance" Report in accordance with Section VI.B of
28

1 the Settlement Agreement, effective [insert date] (“Effective Date”).

2 USCIS has taken the following actions to comply with the terms of the Settlement Agreement:

3 a. Overall, USCIS has adjudicated ___ of the ___ total Class Member SIJ petitions on the
4 Class List to date. ___ of these petitions were approved; ___ were denied; ___ remain pending
5 subsequent to issuance of an RFE; ___ remain pending subsequent to issuance of NOIDs.

6 b. USCIS has not applied the Reunification-Authority Requirement to any SIJ petitions
7 since the Execution Date.

8 c. Per Section IV.E of the Settlement Agreement, USCIS has been made aware of ___ Self-
9 Identified Class Members to date. [*for later reports only*: Since the last “Notice of Compliance”
10 Report, USCIS has been made aware of ___ Self-Identified Class Members] ___ of these Self-
11 Identified Class Members’ petitions have been adjudicated. Of the adjudicated petitions, ___
12 were approved; ___ were denied; ___ were issued an RFE; ___ were issued a NOIR; ___ were issued
13 a NOID. Any RFE/NOID/NOIR issued was on permissible grounds pursuant to the terms of the
14 Settlement Agreement.

15 d. [If USCIS is unable to comply with the above timeframes, USCIS will explain why it was
16 unable to comply here].

17
18 August ___, 2021

Respectfully submitted,

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BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section

WILLIAM C. SILVIS
Assistant Director
Office of Immigration Litigation
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/s/ [draft]
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Katelyn Masetta-Alvarez, hereby certify that on this ____ day of _____, 2021, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

/s/ [draft]
KATELYN MASETTA-ALVAREZ
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation

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Exhibit 4

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

A.O., et al.,

Plaintiffs,

v.

UR M. JADDOU, et al.,

Defendants.

Case No. 19-CV-06151 SVK

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING
SETTLEMENT AND DISMISSING THIS
ACTION WITH PREJUDICE**

Plaintiffs A.O., A.S.R., L.C., R.M., and I.Z.M. (“Plaintiffs”), individually and on behalf of their Class, as 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 U.S. Citizenship and Immigration Services, USCIS; Alejandro Mayorkas, in his official capacity as Secretary, DHS; and Terri Robinson, in her official capacity as Director, USCIS National Benefits Center (“Defendants”) (with Plaintiffs and Defendants collectively referred to herein as the “Parties”), determined to settle the above-captioned matter (the “Action”) on the terms and conditions set forth in the Settlement Agreement dated August 17, 2021, and all exhibits thereto (the “Settlement Agreement”), the original of which is filed with the Clerk of the Court (this settlement process is hereafter referred to as the “Settlement”).

Currently pending is an application for final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

The Court makes the following findings:

1. On [DATE OF PRELIMINARY ORDER], the Court entered an Order Granting Motion for Preliminary Approval of Settlement Agreement (the "Preliminary Approval Order") and directed that notice be given to the members of the Class of the proposed Settlement and Fairness Hearing.

1 2. In the Preliminary Approval Order, the Court approved the form of Class Notice
2 directed to members of the Class.

3 3. On [NOTICE DATE], the Parties distributed the Notice to all Class Members
4 through the following manner: (i) Plaintiffs posted the Class Notice (in English and Spanish),
5 including a copy of the Settlement Agreement; (ii) Plaintiffs directly contacted individuals on the
6 Notification List, through their counsel, by email to their counsel, attaching a copy of the Class
7 Notice (in English and Spanish) and the Settlement Agreement; (iii) Defendants posted the Class
8 Notice (in English and Spanish), including a copy of the Settlement Agreement, on USCIS's
9 website on the "Legal Resources, Legal Settlement Notices" and the "Special Immigrant
10 Juveniles" sections (iv) Plaintiffs distributed the Class Notice (in English and Spanish), including
11 a copy of the Settlement Agreement, on relevant email/listserv mailing lists for direct service
12 providers; and (v) Defendants emailed the Class Notice (in English and Spanish), including a
13 copy of the Settlement Agreement, to its approximately 47,000 subscribed users). The Notice
14 informed Class Members of the Settlement terms and that the Court would consider the
15 following issues at the Fairness Hearing: (a) whether the Court should grant final approval to the
16 Settlement; (b) whether the Court should enter final judgment dismissing the Action with
17 prejudice; and (c) any objections by members of the Class to any of the above that were timely
18 and properly served in accordance with the Preliminary Approval Order.

19 4. Pursuant to the Class Notice, objection(s) to the Settlement were filed with the
20 Court and made at the Fairness Hearing.

21 5. In accordance with the Notice, the Fairness Hearing was held on [DATE OF
22 FAIRNESS HEARING].

23 The Court, having entered the Preliminary Approval Order, having heard the argument in
24 support of the Settlement, having reviewed all of the evidence, objections, and other submissions
25 presented with respect to the Settlement and related matters, and the record of all proceedings in
26 this case, and having made the necessary foregoing findings,

1 It is hereby ORDERED, ADJUDGED, AND DECREED that:

2 1. This Court retains exclusive jurisdiction over the subject matter and personal
3 jurisdiction over the Parties to the Action, including the Class Members, in accordance with
4 Section X of the Parties' signed Settlement Agreement. If the Parties are unable to resolve a
5 dispute, the allegedly aggrieved Party may file a motion for compliance with the Court.

6 2. The terms of the Settlement Agreement are incorporated into this Final Order and
7 Judgment, including the definitions and terms set forth in the Settlement Agreement.

8 3. The Class includes all individuals who meet the definition of the Class certified
9 by the Court on [DATE CERTIFIED]:

10 Any Persons who have been declared dependent on a juvenile court under Section 300 of
11 the California Welfare and Institutions Code and who fall into one of the following two
12 subcategories: (1) "Existing Class Member(s)" means any Persons (1) who were declared
13 dependent on a juvenile court under Section 300 of the California Welfare and
14 Institutions Code on or before October 15, 2019; (2) who (i) filed an SIJ petition with
15 USCIS after turning 18 year old but prior to their 21st birthday, between January 1, 2017
16 and October 15, 2019, or (ii) were between 18 years old and 21 years old and eligible to
17 file an SIJ petition between January 1, 2017 and October 15, 2019 but did not file an SIJ
18 petition because of the Reunification-Authority Requirement; and (3) whose SIJ petitions
19 have not been approved as of the Effective Date of this Agreement. (2)"Future Class
20 Member(s)" means any Persons (1) who have been or will be declared dependent on a
21 juvenile court under Section 300 of the California Welfare and Institutions Code; (2)
22 who, after turning 18 years old but prior to their 21st birthday, filed or will file their SIJ
23 petitions after October 15, 2019; and (3) who receive denials of their SIJ petitions on the
24 grounds that the state court did not have jurisdiction or authority to reunify them with
25 their parents. For the avoidance of doubt, no such denials should occur under the terms
26 of this Agreement.

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1 4. As set forth the in the Settlement Agreement, the settlement includes relief
2 benefiting the Class. Defendants will no longer apply the challenged policy to Class Members
3 and will adjudicate any pending Class Members' petitions in accordance with the terms of the
4 Settlement Agreement.

5 5. Notice to the members of the Class has been given in an appropriate, adequate,
6 and sufficient manner and the Class Notice was reasonably calculated to apprise interested
7 parties or the pendency of the Action, the nature of the claims, the definition of the Class, their
8 opportunities to present objections to the Settlement. The Notice complied in all respects with
9 the requirements of the Federal Rules of Civil Procedure, the United States Constitution
10 (including the Due Process Clause), the rules of this Court, and any other applicable law.

11 6. Members of the Class were given the opportunity to object to the Settlement.
12 _____ Class Members filed an objection to [ANY DESCRIPTION OF THE OBJECTIONS].

13 7. The Court finally approves the Settlement in all respects as fair, reasonable,
14 adequate, and in the best interests of the Class pursuant to Rule 23(e). The Settlement was not a
15 product of fraud or collusion, and the Court finds it satisfies Rule 23(e) after considering: (i) the
16 complexity, expense, and likely duration of the Action; (ii) the stage of the proceedings and
17 amount of discovery completed; (iii) the factual and legal obstacles to prevailing on the merits;
18 (iv) the possible range of recovery; (v) the respective opinions of the Parties, including Plaintiffs,
19 Class Counsel, Defendants, and Defendants' counsel; and (vi) any objections submitted by
20 members of the Class.

21 8. The terms of the Settlement Agreement, including all exhibits to the Settlement
22 Agreement and to this Final Order and Judgment, shall be forever binding on the Class.

23 9. Neither the Settlement, this Final Order and Judgment, any papers related to the
24 Settlement, nor the fact of Settlement shall be used as a finding or conclusion of the Court, or an
25 admission by Defendants, of any fault, wrongdoing, or liability whatsoever.
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1 10. The Parties shall carry out all the terms of the Settlement, including providing an
2 "Updated Notice" to all individuals on the Class List pursuant to the terms of the Settlement
3 Agreement.

4 11. Defendants shall have no liability or responsibility for any payments, fees, or
5 costs under this Final Order and Judgment or the Settlement aside from any fees and costs
6 awarded to Class Counsel, which shall be separately addressed.

7 12. Plaintiffs and the Class Members shall, by operation of this Final Approval Order
8 and Judgment, be deemed to have waived the provisions, rights, and benefits of California Civil
9 Code section 1542, and any similar law of any state or territory of the United States or principle
10 of common law. Class Members shall retain the right to challenge the individual adjudication of
11 their SIJ Petitions.

12 13. Nothing in this Final Order and Judgment or the Settlement Agreement shall
13 preclude any action to enforce the terms of the Settlement as laid out in the Settlement
14 Agreement Section X.

15 14. Without affecting the finality of this Final Order and Judgment in any way, this
16 Court will retain exclusive continuing jurisdiction over all Parties and Class Members with
17 regard to implementation of the Settlement Agreement and enforcement and administration of
18 the Settlement Agreement, including the release and fees provisions thereof, in accordance with
19 the terms in the Settlement Agreement Section IX. The Court may order any appropriate legal or
20 equitable remedy necessary to enforce the terms of this Judgment and/or the Settlement.

21 15. The Action is dismissed with prejudice (except as otherwise provided herein).
22 This is a final and appealable judgment. The Clerk shall close the file.

23 **IT IS SO ORDERED.**

24 DATED: _____, 2021

25
26 _____
27 HON. SUSAN VAN KEULEN
28 United States Magistrate Judge

Exhibit 5

1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

4
5 A.O., et al.,
6 **Plaintiffs,**
7 v.
8 UR M. JADDOU¹, et al.,
9 **Defendants.**

Case No. 19-CV-06151 SVK

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT**

10
11 The Court determines, preliminarily, that the Parties’ August 17, 2021 Settlement Agreement
12 (“the Settlement Agreement”) and its terms fall within the range of reasonableness and merits final
13 approval.

14 The Court also determines that the Class Notice and notice procedure as described in the
15 Settlement Agreement: (i) meets the requirements of Rule 23(e)(1) and due process; (ii) is the best
16 practicable notice under the circumstances; (iii) is reasonably calculated, under the circumstances, to
17 apprise the Class Members of their right to object to the proposed Settlement; and (iv) is reasonable and
18 constitutes due, adequate, and sufficient notice to all those entitled to receive notice.

19 Having determined the above, the Court hereby **GRANTS** the Parties’ Joint Motion for
20 Preliminary Approval of the Settlement Agreement, and orders the following:

- 21 1. The proposed Notice of Proposed Settlement and Fairness Hearing and notice procedure, as set
22 forth in the Settlement Agreement, are approved;
23 2. There are no rights to “opt-out” of the Settlement Agreement and the proposed agreement would
24 bind Class Members;
25 3. The Parties shall cause the Class Notice to be disseminated in the manner set forth in the
26 Settlement Agreement on or before the Notice Date;

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28 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Director Ur M. Jaddou is automatically substituted for former Acting
Director Tracy Renaud.

- 1 4. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the
2 Settlement must submit his or her objection (“Objection”) to the Court in writing, via regular
3 mail on or before the Objection Date, with copies to counsel for the Parties. Such Objection
4 shall include a statement of his or her objection, as well as the specific reason, if any, for each
5 objection, including any legal support the Class Member wishes to bring the Court’s attention
6 and any evidence the Class Member wishes to introduce in support of his or her objection, and to
7 state whether the Class Member wishes to bring the Court’s attention and any evidence the Class
8 Member wishes to introduce in support of his or her objection, and to state whether the Class
9 Member and/or his or her counsel wishes to make an appearance at the Approval Hearing, or be
10 barred from separately objecting;
- 11 5. The Notice Date is hereby set for [five business days following entry of the Preliminary
12 Approval Order].
- 13 6. The Objection Date is hereby set for [35 days following the Notice Date].
- 14 7. The Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the
15 Settlement Agreement is hereby set for [Date of Fairness Hearing] at [] in Courtroom 6,
16 4th Floor, U.S. District Court, 280 S. First Street, San Jose, California.

17 **IT IS SO ORDERED.**

18 DATED: _____, 2021.

19 _____
20 HON. SUSAN VAN KEULEN
21 United States Magistrate Judge
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