

SETTLEMENT AGREEMENT***J.L. et al., v. Cuccinelli et al.,*
Northern District of California
Civil Action No. 5:18-CV-4914-NC (DMR)**

Plaintiffs J.L., J.B.A., M.G.S., and M.D.G.B. (“Plaintiffs”), on behalf of themselves and all Class Members, and Defendants U.S. Citizenship and Immigration Services (“USCIS”); Department of Homeland Security (“DHS”); Kenneth T. Cuccinelli, II, in his official capacity as Director, USCIS; Kevin McAleenan, in his official capacity as Acting Secretary, DHS; and Robert M. Cowan, in his official capacity as Director, USCIS National Benefits Center, (collectively, “Defendants”) by and through their attorneys, hereby enter into this Settlement Agreement, entered into this 25th day of October, 2019, and effective upon the Effective Date defined below. Plaintiffs and Defendants are jointly referred to as the “Parties.”

I. RECITALS

A. On August 14, 2018, 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”) classification, 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.

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 8 U.S.C. § 1101(a)(27)(J), that the conclusion based on the Reunification-Authority Requirement that the California Probate Court lacks the jurisdiction and authority to issue SIJ findings when appointing guardians pursuant to § 1510.1(a) of the California Probate Code violates 8 U.S.C. § 1101(a)(27)(J), and that the new requirement would disqualify the Named Plaintiffs and the Class they proposed to represent from SIJ classification. Defendants deny these allegations.

C. The Court entered a preliminary injunction on October 24, 2018, prohibiting Defendants, during the pendency of the litigation, from: (i) denying SIJ classification pursuant to 8 U.S.C. § 1101(a)(27)(J) on the ground that a California Probate Court does not have jurisdiction or authority to “reunify” an 18- to 20-year-old immigrant with his or her parents; and (ii) initiating removal proceedings against or removing any SIJ petitioner who was appointed a guardian pursuant to § 1510.1(a) of the California Probate Code and whose SIJ petition was denied on the grounds that the California Probate Court did not have jurisdiction or authority to “reunify” an 18- to 20-year-old immigrant 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.

1 **D.** Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court
2 certified the Class as:

3 Children who have received or will receive guardianship orders pursuant to California
4 Probate Code § 1510.1(a) and who have received or will receive denials of their SIJ
5 status petitions on the grounds that the state court that issued the SIJ Findings lacked
6 jurisdiction because the court did not have the authority to reunify the children with their
7 parents.
8 (ECF No. 112).

9 **E.** The Parties filed cross motions for summary judgment with the district court.
10 Prior to a hearing or decision on summary judgment, the Parties entered settlement negotiations
11 and attended settlement conference sessions with Magistrate Judge Donna Ryu on October 3,
12 2019, and October 4, 2019. The Parties, through their counsel, continued to engage in arm's-
13 length settlement negotiations under the direction and supervision of Judge Ryu regarding the
14 terms and conditions of this Settlement Agreement. On October 25, 2019, the Parties finalized
15 and executed this Agreement. Accordingly, the Parties agree, subject to approval by the Court,
16 that the Claims shall be fully and finally compromised, settled, and Defendants shall be released
17 from the Settled Claims (as defined in Section II) pursuant to the terms and conditions set forth
18 in this Agreement.

19 **F.** Plaintiffs' Counsel have evaluated the merits of the Parties' contentions and this
20 settlement as it affects the Parties and the Class Members as well as the risks of continued
21 litigation of the Claims, which include not prevailing on a motion for summary judgment and
22 potential appeals should Plaintiffs prevail. Plaintiffs and Plaintiffs' Counsel, after taking into
23 account the foregoing, along with other risks, delay, and the costs of further litigation, are
24 satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and
25 equitable, and that a settlement of the Action and the prompt provision of relief to the Class
26 Members are in the best interests of those Members.

27 **G.** Defendants deny all liability with respect to the Action, deny that they have
28 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. 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.

H. Both Plaintiffs and Defendants, through counsel, have conducted discussions and
arm's length negotiations regarding a compromise and settlement of the Action with a view to
settling all matters in dispute.

I. 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 Plaintiff or Defendants, and all such

1 allegations are expressly denied. Nothing in this Agreement shall constitute an admission of
2 liability or be used as evidence of liability or non-liability by or against any Party.

3 **J.** Considering the benefits that the Plaintiffs and Class Members will receive from
4 settlement of the Action and the risks of litigation, Class Counsel have concluded that the terms
5 and conditions of this Settlement are fair, reasonable, and in the best interests of the Plaintiffs
6 and Class Members; Plaintiffs have agreed that Defendants shall be released from the Settled
7 Claims pursuant to the terms and provisions of this Settlement; and Plaintiffs have agreed to the
8 dismissal with prejudice of this Action and all Settled Claims as defined in Section II.

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

15 **II. DEFINITIONS**

16 Capitalized terms in this Agreement shall be defined as follows:

17 **“Action”** means the civil action captioned *J.L. et al. v. Kenneth T. Cuccinelli, II, et al.*, Case No.
18 5:18-CV-4914 NC, United States District Court for the Northern District of California.

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

20 **“Adverse Adjudicatory Action”** means (i) decisions of denial or (ii) decisions revoking
21 previously-granted SIJ petitions, on the ground that the California Probate Court, under
22 California Probate Code § 1510.1, does not have jurisdiction or authority to “reunify” an 18- to
23 20-year-old immigrant with his or her parents (the “Reunification-Authority Requirement”).

24 **“Class List”** means the system-generated list, dated October 1, 2019, of individuals who were
25 between 18- and 21-years old on the date of filing of the I-360 (SIJ petition) and included a
26 California residence on their petition. The list of possible Class Members may be both
27 overinclusive and underinclusive. See ECF No. 132-2 at ¶¶ 5–8.

28 **“Class Member(s)”** means any “[c]hildren who have received or will receive guardianship
orders pursuant to California Probate Code § 1510.1(a) and who have received or will receive
denials of their SIJ classification petitions on the grounds that the state court that issued the SIJ
Findings lacked jurisdiction because the court did not have the authority to reunify the children
with their parents” (ECF No. 112) and who file their SIJ petitions by December 15, 2019.

“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 form of Exhibit 2.

1 **“Defendants”** means U.S. Citizenship and Immigration Services (“USCIS”); Department of
2 Homeland Security (“DHS”); Kenneth T. Cuccinelli, II, in his official capacity as Director,
3 USCIS; Kevin McAleenan, in his official capacity as Acting Secretary, DHS; and Robert M.
4 Cowan, in his 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.

5 **“Defendants’ Counsel”** means the United States Department of Justice, Civil Division, Office
6 of Immigration Litigation – District Court Section.

7 **“Effective Date of Settlement” or “Effective Date”** means the date when all of the following
8 shall have occurred: (a) entry of the Preliminary Approval of the Settlement Agreement;
9 (b) approval by the Court of this Settlement Agreement, following notice to the Class and a
10 fairness hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (c) 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.

11 **“Final Order”** means entry by the Court of an order substantially in the form of Exhibit 3 that
12 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.

13 **“Named Plaintiffs”** means J.L., M.D.G.B., J.B.A., and M.G.S.

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

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

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

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

19 **“Plaintiffs’ Counsel” or “Class Counsel”** means Manatt, Phelps & Phillips, LLP, Public
20 Counsel, and Lawyers’ Committee for Civil Rights of the San Francisco Bay Area. Should these
21 entities change their names or merge with other entities, those new entities shall also qualify as
Class Counsel.

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

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

27 **“RFE”** means Request for Evidence.
28

1 **“Self-Identified Class Member”** means an individual who meets all of the requirements
2 described in Section V. 6.

3 **“Settled Claims”** means all claims for relief that were brought on behalf of Class Members
4 based on the facts and circumstances alleged in the Complaint and First Amended Class Action
5 Complaint (ECF Nos. 1, 70), including but not limited to claims for declaratory or injunctive
6 relief based on allegations that USCIS imposed a “new requirement” (the “Reunification-
7 Authority Requirement”) for SIJ classification, which was contrary to state and federal law and
8 violated the Administrative Procedure Act, the Immigration and Nationality Act, and/or the Due
9 Process Clause of the Fifth Amendment to the U.S. Constitution.

7 **“Settlement Protective Order”** means the protective order substantially in the form of
8 Exhibit 4, which the Parties shall jointly request be entered by the Court and govern the
9 exchange of personally identifying information by the Parties.

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

11 **“SIJ petition”** means a form I-360, “Petition for Amerasian, Widow(er), or Special Immigrant,”
12 where Special Immigrant Juvenile is one subset of petitioners who are eligible to file the form I-
13 360, as defined below:

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

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

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

22 **“Updated Class Notice”** means the Notice provided to Members of the Class List sent as
23 described in Section IV.G.

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

1 **III. AGREED UPON TERMS**

2 **A.** USCIS will no longer require the Reunification-Authority Requirement when
3 adjudicating SIJ petitions.

4 **B.** Pursuant to California Probate Code § 1510.1 (“§ 1510.1”) and California Civil
5 Procedure Code § 155, the Probate Division of the California Superior Court (the “Probate
6 Court”) is a “juvenile court” for the purpose of making custodial placements and/or legal
7 commitments; issuing findings regarding whether abandonment, abuse, neglect, or a similar
8 basis under state law renders reunification between a Person under the age of 21 and his or her
9 parent not viable; and issuing findings regarding best interests pursuant to California law, as
10 required under the SIJ Statute.

11 **C.** A Person is not disqualified from SIJ classification provided that: 1) state law
12 confers upon a state court the jurisdiction to declare the Person dependent, legally commit the
13 Person to an individual or entity, or place the Person under the custody of an individual or entity
14 regardless of age; and 2) the Person is unmarried and under the age of 21 when he or she
15 petitions for SIJ classification.

16 **D.** A “child” as defined by § 1510.1 is not disqualified from SIJ classification,
17 despite having reached California’s age of majority before obtaining a custodial placement
18 and/or legal commitment as required for SIJ classification eligibility because the California
19 Probate Court has jurisdiction over such “child” as a “juvenile” for purposes of SIJ classification
20 under § 1510.1.

21 **IV. NOTICE AND APPROVAL PROCEDURE**

22 **A. Preliminary Approval.** As soon as practicable after the execution of this
23 Agreement, the Parties shall jointly move for a Preliminary Approval Order, substantially in the
24 form of Exhibit 5, preliminarily approving this Agreement and this settlement to be fair, just,
25 reasonable, and adequate, approving the Class Notice to the Class Members as described *infra*
26 IV.B, and setting a hearing to consider Final Approval of the Settlement, any objections thereto.

27 **B. Notice for Fairness Hearing.** Not later than two business days after entry of the
28 order granting Preliminary Approval (unless otherwise modified by the Parties or by order of the
Court), the Parties shall effectuate the following:

1. Plaintiffs shall post the Class Notice (in English and Spanish), including a
copy of the Settlement Agreement, on the Public Counsel website and the Lawyers’ Committee
for Civil Rights of the San Francisco Bay Area’s website;

2. Plaintiffs shall directly contact the individual Class Members, through
their counsel, that Plaintiffs have already identified in connection with the declarations
previously filed in this case, and provide a copy of the Class Notice (in English and Spanish),
including a copy of the Settlement Agreement;

1 **3.** USCIS shall post the Class Notice (in English and Spanish), including a
2 copy of the Settlement Agreement, on USCIS’s website on the “Legal Resources, Legal
Settlement Notices” and the “Special Immigrant Juveniles” sections;

3 **4.** Plaintiffs shall distribute the Class Notice (in English and Spanish),
4 including a copy of the Settlement Agreement, on relevant email/listserv mailing lists for direct
5 service providers; and

6 **5.** USCIS’s Office of Public Affairs shall email the Class Notice (in English
7 and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000
subscribed users.

8 **C. Objections.** Any Class Member who wishes to object to the settlement and/or be
9 heard at the Final Approval hearing must submit a written notice of objection and/or request to
10 be heard at the final Approval Hearing, postmarked within 35 days after the Preliminary Notice
11 Date (or such other deadline as the Court might order), by mailing the notice of objection and/or
12 request to be heard to the Class Action Clerk for the Northern District of California, San Jose
13 Courthouse, or by filing the notice of objection and/or request to be heard with the Court. Each
14 notice of objection or request to be heard must include: (i) the case name and number, (ii) the
15 Class Member’s name, (iii) the Class Member’s current address and telephone number, or
16 current address and telephone number of the Class Member’s legal representative, and (iv) an
17 explanation of why the Class Member objects to the Settlement, including the grounds therefore,
18 any supporting documentation, and the reasons, if any, for requesting the opportunity to appear
19 and be heard at the Final Approval hearing. Failure to comply with all requirements of this
20 section shall constitute grounds for striking an objection or denying a request to be heard, if
21 applicable.

22 **D. Opt-Outs.** Due to the nature of the relief offered to the Class Members, no Class
23 Members are permitted to opt-out. All Class Members’ denied, revoked, or pending SIJ
24 Petitions will be adjudicated in accordance with this Agreement.

25 **E. Identification of Class Members.** Within 14 days of the Preliminary Approval
26 of the Agreement and entry of the Settlement Protective Order, Defendants shall provide Class
27 Counsel with the following:

28 **1.** The Class List, subject to the Settlement Protective Order, with 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)

- 1 j. NOIR Flag (indicates if NOIR was issued on I-360)
2 k. RFE/NOID/NOIR Issued
3 l. RFE/NOID/NOIR Response Received
4 m. I-485 Receipt Number (this column will contain a Receipt
5 Number only if the I-485 has been denied)
6 n. I-485 Status (this column will indicate only if the I-485 has been
7 denied)
8 o. I-765 Receipt Number (this column will contain a Receipt
9 Number only if the I-765 has been denied).
10 p. I-765 Status (this column will only indicate if the I-765 has been
11 denied)
12 q. Currently in Removal Proceedings (this column will only indicate
13 a “Y” for yes if the petitioner is in removal proceedings, and will
14 otherwise be blank)¹
15 r. Final Removal Order (this column will only indicate a “Y” for yes
16 if the petitioner has a final removal order (from an IJ or the BIA),
17 and will otherwise be blank)

18 **F. Final Approval Order and Judgment.** At the hearing on Final Approval, the
19 Parties shall jointly move for entry of the Final Order, substantially in the form of Exhibit 3,
20 granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on
21 all Class Members; overruling any objections to the Agreement; ordering that the terms be
22 effectuated as set forth in this Agreement; and giving effect to the releases as set forth in Section
23 IX.

24 **G. Notice of Final Approval.** Not later than two business days after entry of Final
25 Approval of the Agreement (unless otherwise modified by the Parties or by order of the Court),
26 the Parties shall confirm Final Approval by providing an Updated Class Notice (in English and
27 Spanish), to the same websites and distribution lists as set forth in Section IV.B. In addition,
28 within 30 days from the date on which the Court enters the Final Approval of the Settlement
Agreement, Defendants will mail the Updated Class Notice (in English and Spanish)² to each of
the Class List Members’ last known address, and, if represented by an attorney, to their
attorney’s addresses as listed on Form G-28. Defendants will provide confirmation to Class
Counsel via email that such mailing has been sent within five (5) business days of mailing.
Defendants will also post and make available the Updated Class Notice in the following U.S.

¹ ICE voluntarily is providing the following data for categories “q. Currently in Removal Proceedings” and “r. Final Removal Order.” This data is based on information ICE attorneys enter into their electronic system when they receive a new removal case. Although ICE has strived to provide the most accurate information possible, absolute accuracy is not guaranteed. Plaintiffs should bring to Defendants’ Counsel’s attention any inaccuracies they become aware of, such as any individual marked as not in removal proceedings who actually is in removal proceedings.

² The Parties will work together with the goal of preparing a version of the Updated Class Notice, for mailing purposes only, that will be limited to a total of four (4) pages (consisting of two (2) pages in English and two (2) pages in Spanish).

1 Immigration and Customs Enforcement (“ICE”) Detention Centers in California: Adelanto ICE
2 Processing Center; Mesa Verde ICE Processing Facility; Imperial Regional Detention Facility;
3 Otay Mesa Detention Center; Santa Ana City Jail; Yuba County Jail; and James A. Musick
4 Facility.

4 **V. ADJUDICATION PROCEDURES AND TIMELINE FOR SIJ PETITIONS OF
5 NAMED PLAINTIFFS AND CLASS MEMBERS**

6 **A.** The Defendants must adjudicate SIJ petitions in accordance with the SIJ Statute,
7 the Agreement, and the following adjudicatory timeline:

8 **1. Within 7 days of the Effective Date** of this Settlement Agreement,
9 Defendants will adjudicate the SIJ petitions for the Named Plaintiffs in accordance with the
10 terms of the Settlement Agreement.

11 **2. Within 30 days of the Effective Date**, Defendants will reopen and
12 readjudicate the SIJ petitions for all possible Class Members identified on the Class List who
13 previously received a denial of their SIJ petition or a revocation of their SIJ classification, in
14 accordance with the terms of the Settlement Agreement.

15 **3. Within 60 days of the Effective Date**, Defendants will adjudicate the SIJ
16 petitions for all possible Class Members identified on the Class List who were in removal
17 proceedings or who had received final removal orders as of October 16, 2019 (the date when ICE
18 identified who in the Class List are in removal proceedings), in accordance with the terms of the
19 Settlement Agreement.

20 **4. Within 90 days of the Effective Date**, Defendants will adjudicate the SIJ
21 petitions for all possible Class Members identified on the Class List who previously received an
22 RFE, a NOID, and/or a NOIR, in accordance with the terms of the Settlement Agreement.

23 **5. Within 180 days of the Effective Date**, Defendants will adjudicate the
24 SIJ petitions for all possible Class Members identified on the Class List, in accordance with the
25 terms of the Settlement Agreement.

26 **6. Class Members not on Class List.** Any individual who has filed a SIJ
27 Petition as of December 15, 2019, and believes they are part of the class but has not received
28 Class Notice by mailing shall notify Defendants’ Counsel, through Class Counsel, within 120
days from the Effective Date of the Agreement. Such potential Class Member shall provide their
name, A-number, and I-360 receipt number (if available) 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
the above identifying information to Defendants’ Counsel. Defendants will then adjudicate the
individual’s I-360 petition in accordance with the timelines for adjudication outlined in Section
V.A.1–5, but such timeline will begin on the date Defendants’ Counsel receives Class Counsel’s
request for that individual.

1 **B.** The above processing times in this Agreement may be tolled in certain
2 circumstances outlined below, because such actions may take the case beyond the agreed time
3 frame for final adjudication, per this Agreement. This is to ensure that the petitioners are
4 afforded the full response times as required by 8 C.F.R. § 103.2. Specifically:

5 **1.** If USCIS issues an RFE, it must allow the petitioner the permitted 87 days
6 to respond.

7 **2.** If USCIS issues a NOID, it must allow the petitioner the permitted 33 days
8 to respond.

9 **3.** If USCIS must refer the case for adjudication of background checks or to
10 the Fraud Detection and National Security Directorate, it would require time for that process to
11 complete.

12 **4.** In most cases, USCIS must have the A-file for final adjudication. If
13 USCIS experiences a delay in obtaining the A-file for those petitioners, and such delay results in
14 an uncompleted adjudication within the agreed time frame, then Defendants reserve the right to
15 provide this information in the Compliance Report and make a request to the Court that they not
16 be found out of compliance in that instance. Plaintiffs reserve the right to object to such request.

17 **C.** For any Class Member who already received an RFE, NOID, NOIR, denial, or
18 revocation of their SIJ petition, USCIS shall not issue a new RFE or NOID for any grounds not
19 previously raised in the earlier RFE, NOID, NOIR, denial, or revocation. This provision does
20 not preclude USCIS from issuing RFEs, NOIDs, denials, or revocations based on new grounds
21 that did not exist at the time the earlier RFE, NOID, denial, or revocation was issued.

22 **D.** SIJ Petitions of Class Members who have been issued RFEs, NOIDs, denials,
23 NOIRs, or revocations solely based on the Reunification-Authority Requirement will be
24 adjudicated in accordance with the terms of the Settlement Agreement and will be favorably
25 adjudicated if otherwise approvable.

26 **E.** The foregoing provisions do not limit USCIS's ability to issue RFEs, NOIDs,
27 NOIR, denials, or revocations based on changes to factual circumstances, which occurred after
28 the date of the previously issued RFE, NOID, NOIR, denial, or revocation in accordance with the
terms of this Agreement. For the Class Members described in C and D above, USCIS will only
issue an RFE, NOID, NOIR, denial or revocation that is based on information post-dating the
issuance of said RFE, NOID, NOIR, denial or revocation. 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 SIJ classification specifically based on the SIJ Petitioner's age, shall not apply to Class
Members.

1 **F.** For any Class Member who has not already received an RFE, NOID, NOIR, or
2 denial of their SIJ petition, USCIS may issue an RFE or NOID in accordance with the law and
3 this Agreement. Consistent with USCIS's best practices, USCIS will make every effort to list all
4 grounds for issuance in the one RFE, NOID, or NOIR.

5 **G.** Defendants also shall provide no fewer than 45 days' notice to Plaintiffs' Class
6 Counsel before USCIS takes any Adverse Adjudicatory Action (as defined *supra* Section II)
7 against any of the Plaintiffs or Class Members. Notice shall be in the form of a NOID or NOIR
8 provided to the Class Member and attorney of record, and a copy to Class Counsel. Such notice
9 shall be in the form of a NOID or NOIR provided to the Class Member and attorney of record,
10 and a copy to Class Counsel, sent to a designated e-mail address:
11 CASIJClassAction@manatt.com. If a denial is issued, a copy shall be provided to Class
12 Counsel.

13 **H.** For denials issued because a Class Member failed to respond to an RFE, NOID, or
14 NOIR based solely on the Reunification-Authority Requirement, the petition will be
15 readjudicated in accordance with the terms of the Settlement Agreement.

16 **I.** Should a Class Member who has received a final order of removal intend to move
17 to reopen his or her removal proceedings and/or seek to rescind his or her order of removal, the
18 Class Member shall notify Class Counsel who shall notify Defendant's Counsel of said Class
19 Member's intention. Within five (5) business days of Class Counsel notifying Defendants'
20 Counsel, USCIS shall request that ICE join or not oppose such motion to reopen and/or rescind.
21 If ICE refuses to do so, Defendants' Counsel shall inform Class Counsel within five (5) business
22 days of ICE's refusal.

23 **J.** Should a Class Member receive a final order of removal before his or her SIJ
24 petition has been reopened or adjudicated in accordance with the terms of this Agreement, within
25 five (5) business days of Defendants' Counsel being informed of such order by Class Counsel,
26 USCIS shall request that ICE refrain from executing the removal order. If ICE refuses to do so,
27 Defendants shall inform Class Counsel within five (5) business days of ICE's refusal.

28 **K.** USCIS shall not issue a Notice to Appear to any Class Member based on the
denial of a SIJ Petition solely denied due to the Reunification-Authority Requirement until
USCIS has fully adjudicated their I-360 in accordance with the Settlement Agreement.

L. 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 application that were denied in conjunction with the denial of Class Members' SIJ petitions
for all 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 Class Member's 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-

1 360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis
2 of the denied underlying petition, USCIS will reopen the I-485 and if immediately approvable,
3 will readjudicate the I-485 within five (5) business days of approving the I-360 and will take no
4 action on the denied I-765.

5 **2.** For Class Members whose I-485s or I-765s were denied due to a denied
6 underlying I-360 petition, where the I-485 is not immediately approvable: When an underlying
7 I-360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis
8 of the denied underlying petition, USCIS will reopen the I-485 and if not immediately
9 approvable, will reopen and readjudicate the I-765 within five (5) business days of approving the
10 I-360.

11 **3.** For Class Members whose I-485s or I-765s were denied due to a denied
12 underlying I-360 petition, where the I-485 is not immediately approvable and the Employment
13 Authorization Document (“EAD”) has been terminated or has expired: When an underlying I-
14 360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis
15 of the denied underlying petition and the I-765 had been previously approved but the EAD
16 terminated at the time of the I-485 denial or is presently expired, USCIS will reopen the I-485
17 within five (5) business days of approving the I-360 and if not immediately approvable, will
18 reopen and issue an RFE for a no-fee I-765, and will adjudicate the I-765 upon the receipt of the
19 RFE response.

20 **VI. IMPLEMENTATION AND ENFORCEMENT OF THIS SETTLEMENT** 21 **AGREEMENT**

22 **A. Record Keeping Requirements:** USCIS shall retain and preserve all records,
23 forms, logs, reports, and other written documents, including electronic records and files, that are
24 relevant to the adjudications of SIJ petitions as set forth in this Agreement in accordance with all
25 of USCIS’s applicable records-retention requirements, procedures, and policies, which can be
26 found at <https://www.archives.gov/research/immigration/aliens>. USCIS shall be responsible for
27 maintaining and preserving, or supervising the maintenance and preservation of, these records.
28 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 at least four Notice of Compliance Reports at the following benchmarks: 35 days,
65 days, 95 days, and 185 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
90 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 terms of this Settlement Agreement, including:

a. The number of adjudicated Class Member SIJ petitions to date,
including the number of approvals, denials, RFEs, NOIDs, NOIRs, or revocations.

1 **b.** The number of adjudicated Class Member SIJ petitions for each
2 identified and agreed upon timeframe above, including the number of approvals, denials, RFEs,
NOIDs, NOIRs, or revocations.

3 **c.** The reason for any non-compliance with said timeframes.

4 **d.** A statement from USCIS that it has not applied the Reunification-
5 Authority Requirement to any SIJ petitions since the return of the executed Settlement
6 Agreement.

7 **2.** The Notice of Compliance Report shall include the following information
8 for Self-Identified Class Members: total number identified; applicable deadline timeframe for
9 adjudication per the Agreement; beginning and endpoint of said allotted adjudication time frame;
10 number of approvals, denials, RFEs, NOIDs, NOIRs, or revocations; date of adjudication.

11 **3.** Plaintiffs, through Class Counsel, shall have the opportunity to meet and
12 confer with Defendants regarding the Notice of Compliance Report, submit a response to any
13 Compliance Report within five (5) business days of service, and request a hearing with the Court
14 as needed.

15 **VII. SETTLEMENT BASED ON COURT APPROVAL OF TERMS**

16 **A.** In the event that the Court does not approve the Settlement Agreement, the
17 Parties' good-faith adherence to the terms of this Settlement prior to said nonapproval, reversal,
18 vacatur, or termination shall not be considered unlawful.

19 **B.** This Settlement is subject to and contingent upon Court approval under Rule
20 23(e) of the Federal Rules of Civil Procedure.

21 **C.** Except as otherwise provided herein, in the event the Agreement is terminated or
22 modified in any material respect or fails to become effective for any reason, then the Agreement
23 shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to
24 this Agreement shall be deemed to have reverted to their respective status in the Action as of the
25 date and time immediately prior to the execution of this Agreement; and except as otherwise
26 expressly provided, the Parties shall proceed in all respects as if this Agreement and any related
27 orders had not been entered. In the event that the Agreement is terminated or modified in any
28 material respect, the Parties shall be deemed not to have waived, not to have modified, or not to be
estopped from asserting any additional defenses or arguments available to them. In such event,
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.

1 **VIII. TERMINATION OF OBLIGATIONS**

2 The obligations of this Agreement shall automatically terminate at the same time as the
3 Court's jurisdiction. At that time, this Agreement shall dissolve without further action.

4 **IX. RELEASES**

5 **A.** As of the Effective Date, the Plaintiffs and the Class Members, on behalf of
6 themselves; their heirs, executors, administrators, representatives, attorneys, successors, assigns,
7 agents, affiliates, and partners; and any persons they represent, by operation of any final
8 judgment entered by the Court, shall have fully, finally, and forever released, relinquished, and
9 discharged the Defendants of and from any and all of the Settled Claims, and the Plaintiffs and
10 the Class Members shall forever be barred and enjoined from bringing or prosecuting any Settled
11 Claim against any of the Defendants, and all of their past and present agencies, officials,
12 employees, agents, attorneys, and successors. This Release shall not apply to claims that arise or
13 accrue after the termination of this Agreement.

14 **B.** Nothing in this Agreement should be construed as establishing any right or
15 interest in challenging an adverse SIJ petition adjudication, or any other DHS or USCIS action,
16 decision, determination, order, form, instruction, training material, delay, or process or
17 procedure, beyond those expressly provided herein or under law.

18 **C.** Nothing in this Agreement should be construed as affecting any Class Members'
19 right or interest in challenging the adjudication of his or her individual I-360, I-485, or I-765, or
20 challenging any related removal order. Individual Class Members expressly maintain the right to
21 challenge the adjudication of such petitions and orders.

22 **D.** In consideration of the terms and conditions set forth herein, Plaintiffs hereby
23 release and forever discharge Defendants, and all of their past and present agencies, officials,
24 employees, agents, attorneys, successors, and assigns from any and all obligations, damages,
25 liabilities, causes of action, claims, and demands of any kind and nature whatsoever, whether
26 suspected or unsuspected, arising in law or equity, arising from or by reason of any and all
27 known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from
28 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.

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:

1 A general release does not extend to claims that the creditor or
2 releasing party does not know or suspect to exist in his or her favor
3 at the time of executing the release and that, if known by him or
4 her, would have materially affected his or her settlement with the
5 debtor or released party.

6 **F. Effectuation of Settlement.** The above releases do not include any release of
7 claims to enforce the terms of this Agreement prior to termination of obligations under this
8 Agreement as provided in Section VIII.

9 **G. No Admission of Wrongdoing.** This Agreement, whether or not executed, and
10 any proceedings taken pursuant to it:

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

14 **2.** shall not be offered or received against the Defendants as evidence of, or
15 construed as or deemed to be evidence of, any presumption, concession, or admission by any of
16 the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that
17 was asserted in the Action or in any litigation or the deficiency of any defense that has been or
18 could have been asserted in the Action or of any liability, negligence, fault, or wrongdoing of the
19 Defendants, or any admission by the Defendants of any violation of or failure to comply with the
20 Constitution, law, or regulations; and

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

28 **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

1 informally any differences regarding interpretation of and compliance with this Agreement
2 prior to bringing such matters to the Court for resolution.

3 **C.** The Parties shall have the right to seek from the Court relevant modifications of
4 this Agreement to ensure that its purposes are fully satisfied, provided that any request for a
5 modification has been preceded by good faith negotiations between the Parties. The Parties
6 may agree in writing to modify the deadlines established in this Agreement without Court
7 approval, but such writing must be lodged with the Court.

6 **XI. ATTORNEYS' FEES, COSTS, AND EXPENSES**

7 The Parties have agreed to bifurcate Plaintiffs' claim for fees plus costs and expenses,
8 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) and 5 U.S.C. § 504
9 *et seq.* Therefore, EAJA fees are not a subject of this Agreement, other than that the Parties
10 agree that the district court would retain jurisdiction over the issue of attorneys' fees and costs
11 that may be unresolved by the Parties. The Parties shall negotiate Plaintiffs' EAJA fees and
12 costs request for a period of 45 days from the date of execution of this Agreement, assuming
13 Plaintiffs have provided Defendants with supplementation to the EAJA request by that date.
14 Should the Parties be unable to reach an Agreement, Plaintiffs shall file a motion for EAJA fees
15 no later than 30 days following the Effective Date of this Agreement.

13 **XII. ADDITIONAL PROVISIONS**

14 **A. Best Efforts.** The Parties' counsel shall use their best efforts to cause the Court
15 to grant Preliminary Approval of this Agreement and Settlement as promptly as practicable, to
16 take all steps contemplated by this Agreement to effectuate the Settlement on the stated terms
17 and conditions, and to obtain Final Approval of this Agreement and Settlement.

17 **B. Change of Time Periods.** The time periods and/or dates described in this
18 Agreement with respect to providing Notice of the Preliminary Approval of the Agreement and
19 Preliminary Approval and Fairness hearings are subject to approval and change by the Court or
20 by the written agreement of the Parties' counsel, without notice to Class Members.

20 **C. Time for Compliance.** The dates described herein refer to calendar days, unless
21 otherwise stated. If the date for performance of any act required by or under this Agreement falls
22 on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with
23 the same effective as if it had been performed on the day or within the period of time specified
24 by or under this Agreement.

23 **D. Entire Agreement.** The terms and conditions set forth in this Agreement
24 constitute the complete and exclusive statement of the agreement between the Parties relating to
25 the subject matter of this Agreement, superseding all previous negotiations and understandings,
26 and may not be contradicted by evidence of any prior or contemporaneous agreement. The
27 Parties further intend that this Agreement constitute the complete and exclusive statement of its
28 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.

1 **E. Advice of Counsel.** The determination of the terms of, and the drafting of, this
2 Agreement have been by mutual agreement after negotiation, with consideration by and
3 participation of all Parties and their counsel. The presumption found in California Civil Code
4 § 1654 that uncertainties in a contract are interpreted against the party causing the uncertainty to
5 exist is hereby waived by all Parties.

6 **F. Binding Agreement.** This Agreement shall be binding upon and inure to the
7 benefit of the Parties' respective heirs, successors, and assigns.

8 **G. No Waiver.** The waiver by any Party of any provision or breach of this
9 Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

10 **H. Requirement of Execution.** This Agreement shall be valid and binding as to the
11 Class Members and Defendants upon (1) signature by Plaintiffs, (2) signature by authorized
12 representatives of Defendants, and (3) signature as to form by an authorized representative of
13 each of the law firms defined as Plaintiffs' Counsel, under the condition that the Agreement is
14 approved by the Court.

15 **I. Execution in Counterparts.** This Agreement shall become effective upon its
16 execution by all of the undersigned. The Parties may execute this Agreement in counterparts
17 and/or by fax or electronic mail, and execution of counterparts shall have the same force and
18 effect as if all Parties had signed the same instrument.

19 **J. Extensions of Time.** The Parties reserve the right, by agreement and subject to
20 the Court's approval, to grant any reasonable extension of time that might be needed to carry out
21 any of the provisions of this Agreement.

22 **K. Interpretation and Enforcement of This Agreement.** The Court shall have,
23 and after Final Approval shall retain, jurisdiction to enforce, interpret, and implement this
24 Agreement as set forth in Section X.

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

27 Class Counsel: CASIJClassAction@manatt.com

28 Sirena P. Castillo
29 Manatt, Phelps & Phillips, LLP
30 11355 West Olympic Boulevard
31 Los Angeles, CA 90064-1614
32 Telephone: (310) 312-4000

33 Mary Tanagho Ross
34 Public Counsel
35 610 South Ardmore Avenue
36 Los Angeles, CA 90005
37 Telephone: (213) 385-2977

1 Bree Bernwanger
2 Lawyers' Committee For Civil Rights Of The San Francisco Bay Area
3 131 Steuart Street, Suite 400
4 San Francisco, CA 94105
5 Telephone: (415) 543-9444

6 Defendants or Defendants' Counsel:

7 Lauren E. Fascett
8 Senior Litigation Counsel
9 United States Department of Justice
10 Civil Division
11 Office of Immigration Litigation
12 District Court Section
13 Ben Franklin Station, P.O. Box 868
14 Washington, D.C. 20044
15 Telephone No.: (202) 616-3466
16 Email: Lauren.Fascett@usdoj.gov

17 Catherine M. Reno
18 Trial Attorney
19 United States Department of Justice
20 Civil Division
21 Office of Immigration Litigation
22 District Court Section
23 Ben Franklin Station, P.O. Box 868
24 Washington, D.C. 20044
25 Telephone No.: (202) 353-8557
26 Catherine.M.Reno@usdoj.gov

27
28
THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

3 **APPROVED AS TO FORM:**

4 DATED: October 25, 2019

MANATT PHELPS & PHILLIPS, LLP

5 Sirena Castillo
6 Sirena P. Castillo, Esq.

7 DATED: October 25, 2019

PUBLIC COUNSEL

9 Mary Tarragho Ross
10 Mary Tarragho Ross, Esq.

11 DATED: October __, 2019

LAWYER'S COMMITTEE FOR CIVIL RIGHTS
12 OF THE SAN FRANCISCO BAY AREA

13
14 Bree Bernwanger, Esq.

15 **AGREED TO BY PLAINTIFFS:**

16 DATED: October __, 2019

17
18 J.B.A.

19 DATED: October __, 2019

20
21 J.L.

22 DATED: October __, 2019

23
24 M.G.S.

25 DATED: October __, 2019

26
27 M.D.G.B.

28

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8 DATED: October __, 2019

PUBLIC COUNSEL

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10 _____
Mary Tanagho Ross, Esq.

11 DATED: October 25, 2019

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10 _____
Mary Tanagho Ross, Esq.

11 DATED: October __, 2019

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MANATT PHELPS & PHILLIPS, LLP

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6 Sirena P. Castillo, Esq.

7 DATED: October ____, 2019

PUBLIC COUNSEL

8 _____
9 Mary Tanagho Ross, Esq.

10 DATED: October ____, 2019

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Sirena P. Castillo, Esq.

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PUBLIC COUNSEL

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10 _____
Mary Tanagho Ross, Esq.

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12 DATED: October ___, 2019

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J.B.A.

19 DATED: October ___, 2019

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J.L.

22 DATED: October ___, 2019

23
24 _____
M.G.S.

25 DATED: October 25, 2019

26
27 M.D.G.B.
M.D.G.B.
28

1 **FOR AND ON BEHALF OF DEFENDANTS:**

2 EXECUTED this 25 day of October, 2019

3

4 

5 **Lauren E. Fascett**

6 Senior Litigation Counsel
7 United States Department of Justice
8 Civil Division
9 Office of Immigration Litigation
10 District Court Section
11 Ben Franklin Station, P.O. Box 868
12 Washington, D.C. 20044

10

11 

12 **Catherine M. Reno**

13 Trial Attorney
14 United States Department of Justice
15 Civil Division
16 Office of Immigration Litigation
17 District Court Section
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