

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STUART E. SCHIFFER  
Acting Assistant Attorney General  
Civil Division  
MARK C. WALTERS, Maryland Bar (no number issued)  
Assistant Director  
LINDA WERNERY, D.C. Bar # 443771  
GREG MACK, Maryland Bar (no number issued)  
Attorneys  
Office of Immigration Litigation  
United States Department of Justice  
Civil Division  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 616-4857  
Facsimile: (202) 616-9366  
  
PATRICIA M. CORRALES-TALLEDA  
California Bar No. 183249  
Attorney  
Office of Immigration Litigation  
606 South Olive Street, 8th Floor  
Los Angeles, California 90014  
Telephone: (213) 894-2161 ext. 120  
Facsimile: (213) 894-8701

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

GUSTAVO ESCUTIA, et al.,	)	No. SA CV 00-841	AHS
	)		
Plaintiffs	)		
	)		
v.	)	SETTLEMENT AGREEMENT	
	)		
JANET RENO, et al.	)		
	)		
Defendants	)		
	)		
	)		

1       WHEREAS, Plaintiffs and Defendants consider it in their best  
2 interests to resolve all the issues raised in this action through  
3 a stipulated settlement agreement;

4       NOW THEREFORE, plaintiffs and defendants (hereinafter "the  
5 parties") enter into and do hereby stipulate to a Settlement  
6 Agreement (hereinafter "Agreement") that imposes binding  
7 obligations upon the parties and their successors to the extent  
8 stated below and that constitutes a full and complete resolution  
9 of the issues in this action.

10       **A.    DEFINITIONS**

11       As used throughout this Agreement, the following definitions  
12 shall apply:

13       1.    The term "party" or "parties" shall apply to  
14 plaintiffs, plaintiff class members, plaintiffs' counsel, and  
15 defendants. As the term applies to defendants, it shall include  
16 their agents, employees, contractors, and/or successors in  
17 office.

18       2.    The term "applicant" or "applicants" shall apply to  
19 plaintiffs and plaintiff class members.

20       3.    The term "Family Unity Benefits" is defined as benefits  
21 **provided** by section 301 of the Immigration Act of 1990, 104 Stat.  
22 4978, and implementing regulations.

23       4.    The term "initial application" is defined as the first  
24 application for Family Unity Benefits filed by an applicant.

25       5.    The term "renewal" is defined as an application for an  
26 extension of the original 2-year period of voluntary departure  
27 which is granted to successful initial applicants under the



1 will also be notified when defendants resume devotion of and  
2 average of 16 hours or more per business day to the adjudication  
3 of initial applications.

4 11. Should defendants be unable or unwilling to maintain the  
5 level of resources for initial applications described in  
6 paragraphs 6-9 for a period of 71 business days or more in any  
7 given six month period while this agreement is in effect, and  
8 upon proof that none of the conditions described in paragraph 12  
9 exist, plaintiffs may opt out of part of this agreement. They  
10 may opt out of that portion of the agreement dealing with initial  
11 applications only, and may renew litigation over the pace at  
12 which initial applications are being adjudicated. This agreement  
13 will remain in effect as to all other issues covered by it,  
14 including the pace of adjudication of renewals, the issuance of  
15 employment authorization documents, administrative closure of  
16 removal proceedings, and any other matter raised by their  
17 complaint or dealt with in this agreement.

18 12. Plaintiffs may not partially opt out of the agreement  
19 to the extent described in paragraph 11 if one or more of the  
20 following conditions exist at the time they are notified that  
21 defendants have reduced the commitment of resources below that  
22 described in paragraphs 7-9:

23 a. defendants inform plaintiffs that there are no  
24 longer any initial applications ready for adjudication; or

25 b. after the date of this agreement, Congress enacts a  
26 new law, or Temporary Protected Status [TPS] is offered to

27

28

1 citizens of a new country, or current TPS is extended, any of  
2 which add significantly and unexpectedly to the caseload of the  
3 CSC adjudicators, and/or Congress mandates a change in the  
4 priorities for adjudication of applications either directly, or  
5 indirectly by setting mandatory time limits for adjudication of  
6 benefits other than Family Unity; or

7 c. Plaintiffs' counsel have filed a class action  
8 lawsuit challenging the pace at which the defendants are  
9 adjudicating applications at the CSC for benefits other than  
10 Family Unity benefits; or

11 d. A class action suit is filed by any person(s) or  
12 entity(s) challenging the pace at which the defendants are  
13 adjudicating applications at the CSC for benefits other than  
14 Family Unity benefits, and an order is entered requiring the  
15 commitment of adjudication resources to applications other than  
16 Family Unity Benefits.

17 When defendants invoke any of the subparagraphs (a-d) above  
18 as a reason for reducing their commitment of resources, they will  
19 inform plaintiffs of that fact, and where subparagraph (b) is  
20 invoked defendants will identify the new law or TPS obligation  
21 upon which they rely.

## 22 2. Renewals

23 13. Defendants agree to issue work authorization to  
24 applicants seeking to renew their Family Unity Benefits. For  
25 pending applications for renewals, defendants agree to issue  
26 Employment Authorization Documents (EAD) within 90 days of the  
27

1 Court's approval of this settlement agreement. For applications  
2 filed on or after the date of Court approval of this settlement  
3 agreement, defendants will issue the EAD's within 90 days of the  
4 filing of the applications.

5 **D. UNLAWFUL PRESENCE**

6 14. Defendants agree to issue a policy memorandum within 90  
7 days of the Court's approval of this settlement agreement,  
8 memorializing the INS's position regarding family unity benefits  
9 and unlawful presence. Defendants will show the memorandum to  
10 plaintiffs' counsel, and provide them with a reasonable  
11 opportunity to provide comments, before it is issued. It will be  
12 issued to INS district offices, district and regional counsel,  
13 and to the Department of State.

14 **E. REMOVAL AND ADMINISTRATIVE CLOSURES**

15 15. Defendants will not agree to refrain from instituting  
16 or proceeding with removal proceedings simply because an alien  
17 has a pending family unity application.

18 Defendants will, however, place in the policy memorandum  
19 described in paragraph 14, a reminder to district offices that  
20 they may, as a matter prosecutorial discretion, refrain from  
21 instituting proceedings or agree to administrative closure on a  
22 case by case basis when proof of filing an application for Family  
23 Unity benefits is presented to them.

24 **F. DISPUTE RESOLUTION AND CONTINUING JURISDICTION**

25 16. The parties agree to the following dispute resolution  
26 mechanism, which must be followed before a party may seek any  
27

1 relief from the Court:

2 a. Notice of Claimed Violation

3 Upon learning of any fact or facts that constitute the basis  
4 for asserting that a party, without notice or good cause shown,  
5 has engaged in a pattern or practice constituting substantial  
6 noncompliance or a material breach of the terms of this Agreement  
7 or that any party has expressly repudiated any of its terms, the  
8 complaining party shall notify the other party ("responding"  
9 party), in writing, of the fact or facts that form the basis of  
10 the complaint and request a report on any action to be taken with  
11 respect thereto prior to invoking the enforcement provisions of  
12 this Agreement. The parties agree that such allegations of  
13 violations of this Agreement must be substantiated with specific  
14 detailed information about the violation sufficient to enable the  
15 responding party to investigate and respond.  
16

17 b) Response of Adverse Party

18 Within 30 days after receipt of such notice the responding  
19 party shall notify the complaining party of the results of its  
20 investigation of the facts and any action it has taken or intends  
21 to take in connection therewith.

22 Within 30 days thereafter, the parties shall negotiate in  
23 good faith in an effort to resolve any disputes remaining after  
24 completing the actions set forth subparagraphs (a) and (b).  
25

26 17. The parties agree that the provisions set forth in  
27 paragraph 16 are not applicable to claims that the defendants  
28

1 have failed to comply with any duty or obligation described in  
2 paragraph 7 regarding the resources committed to the processing  
3 of initial applications for Family Unity Benefits. For any such  
4 claim plaintiffs sole recourse is to opt out of the Agreement as  
5 provided in paragraphs 11 and 12.

6 18. The parties further agree that the provisions in  
7 paragraph 16 shall not be invoked for *de minimus* violations. For  
8 purposes of paragraph 13 (requiring defendants to issue EAD to  
9 new renewal applicants for Family Unity Benefits within ninety  
10 (90) days of the filing of the application, and requiring  
11 defendants to issue EAD to pending renewal applicants for Family  
12 Unity Benefits within ninety (90) days of the effective date of  
13 this agreement), a *de minimus* violation is defined as failure by  
14 defendants to meet the processing time in any particular instance  
15 within five or fewer business days after the expiration of the  
16 processing time period.

18 19. The parties further agree that, for purposes of  
19 allegations that defendants have not complied with the processing  
20 times described in paragraph 13 of this Agreement, allegations of  
21 noncompliance do not constitute allegations of a pattern or  
22 practice violation unless, in the absence of unforeseeable  
23 circumstances, it is alleged that defendants fail to meet such  
24 processing times in six or more instances over a three month  
25 period, and further alleged that such failures are not *de minimus*  
26 violations as defined in paragraph 18. While meeting this  
27



1 threshold entitles plaintiffs to take advantage of certain  
2 provisions of this settlement agreement, it is not a concession  
3 by defendants that a pattern or practice of violations exists,  
4 and defendants reserve the right to raise any defense to the  
5 allegations in court proceedings, including the defense that no  
6 pattern and practice exists.

7 20. The parties also agree that any failure by defendants  
8 to comply with the application processing times described in  
9 paragraph 13 of this Agreement does not constitute a violation of  
10 this Agreement in the case of unforeseeable circumstances. The  
11 term "unforeseeable circumstances," as used in this paragraph and  
12 paragraph 19, includes major disruptions of normal business  
13 caused by computer failures, power outages, fires or other  
14 accidental damage to records or equipment, an immigration  
15 emergency that requires diversion of resources from all but the  
16 most time-sensitive categories of applications, and other  
17 circumstances of this nature and gravity or greater, but does not  
18 include the normal fluctuation in the number of Family Unity  
19 Benefit applications submitted to the California Service Center.

21 21. For inquiries or complaints by individual class members  
22 about the status of their individual applications, defendants  
23 will establish a point of contact. Defendants will notify  
24 plaintiffs' counsel of the name of the point of contact, and  
25 provide contact information, upon approval of the settlement  
26 agreement.  
27

1           22. The Court will not retain continuing jurisdiction to  
2 supervise the implementation of this Agreement or to enforce its  
3 terms, except as follows: The Court will retain continuing  
4 jurisdiction for the duration of this Agreement as set forth in  
5 paragraph 6, for the purposes of resolving (a) claims by  
6 plaintiffs that defendants or their successors have expressly  
7 repudiated this Agreement, or (b) claims by plaintiffs that  
8 defendants or their successors have engaged in a pattern or  
9 practice of violations constituting substantial noncompliance or  
10 a material breach of the terms of this Agreement. Upon approval  
11 of this settlement agreement by the Court plaintiffs will move to  
12 dismiss this case, without prejudice to reinstatement for the  
13 limited purpose of dealing with any matter over which the Court  
14 retains jurisdiction under this agreement. Upon expiration of  
15 the agreement, the parties agree that the case will be dismissed  
16 with prejudice. Upon expiration of the agreement, any class  
17 member who has pursued the grievance procedure described in  
18 paragraph 16 without success for an alleged violation of this  
19 agreement, may file an individual suit challenging the underlying  
20 conduct which caused him or her to use the grievance procedure,  
21 but the suit must be based upon a claimed violation of law, and  
22 not upon a claimed violation of any terms of this agreement.  
23 Defendants do not waive any defenses they may have to such new  
24 suits.  
25

26           23. In exercising the retained jurisdiction, the Court  
27

1 shall not act on any matter until the complaining party has  
2 initiated and completed the dispute resolution mechanism set  
3 forth in paragraph 16. Nor shall the Court modify or expand in  
4 any way the undertakings of the parties hereunder without consent  
5 of all parties.

6 **G. REPORT**

7 24. Defendants agree to report the number of Family Unity  
8 applications adjudicated by the CSC every quarter to plaintiffs'  
9 counsel.

10 **H. CERTIFICATION OF CLASS**

11 25. The parties agree that the Court will certify a class  
12 of plaintiffs consisting of:

13 All applicants for Family Unity benefits under Section  
14 301 of the Immigration Act of 1990, whose applications  
15 are pending at the California Service Center on the  
16 date of the Court's approval of this agreement or are  
17 filed with or transferred to the California Service  
18 Center during the 15 months in which this agreement  
19 will be in effect.  
20

21 If approved by the Court, this settlement agreement will be  
22 binding upon the class.

23 **I. NOTICE TO THE CLASS**

24 26. Notice of this settlement agreement shall be provided  
25 to the class as follows:  
26  
27  
28

1 a. by placement of a notice and the agreement on the  
2 INS internet website;

3 b. by distribution of the agreement to the Community  
4 Relations Office located within each INS District Office within  
5 the jurisdiction of the CSC;

6 c. by distribution of the agreement to all immigration  
7 assistance providers listed on the Roster of Recognized  
8 Organizations and Accredited Representatives maintained by the  
9 Executive Office for Immigration Review pursuant to 8 C.F.R. 292.

10 **J. ATTORNEYS FEES AND COSTS**

11 27. Defendants agree to pay to plaintiffs the total sum of  
12 \$12,000 as full settlement of any and all claims for attorneys'  
13 fees, costs and expenses whether sought under the Equal Access to  
14 Justice Act or otherwise, incurred in this litigation and to be  
15 incurred in implementing this settlement agreement. Payment of  
16 this amount of fees will be made within 60 days after the  
17 effective date of this Agreement. Such payment shall be executed  
18 in the name of the American Immigration Law Foundation, Employer  
19 ID No. 52-1549711, and forwarded to the first address set forth  
20 below the signature of plaintiffs' counsel.  
21  
22  
23  
24

25 THE PLAINTIFFS

THE DEFENDANTS

26 BY: \_\_\_\_\_

NADINE K. WETTSTEIN

1 J. TRACI HONG  
2 American Immigration Law Foundation BY: \_\_\_\_\_  
3 918 F Street, NW  
4 6th Floor  
5 Washington, DC 20004  
6 (202) 371-6450  
7  
8 LINTON JOAQUIN  
9 National Immigration Law Center  
10 3435 Wilshire Boulevard, Suite 2850  
11 Los Angeles, CA 90010  
12 (213) 639-3900  
13  
14 MARK SILVERMAN  
15 Immigrant Legal Resource Center  
16 1663 Mission Street, Suite 602  
17 San Francisco, CA 94103  
18 (415) 255-9499  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MARK C. WALTERS  
Assistant Director  
LINDA S. WERNERY  
Senior Litigation Counsel  
GREG MACK  
Attorney  
U.S. Department of Justice  
Civil Division  
Office of Immigration  
Litigation  
P.O. Box 878  
Washington. D.C. 20044  
(202) 616-5193

11 Dated:

Dated: