

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS) Case No. 88-379R
PROJECT, ET AL.)
PLAINTIFFS,) STIPULATION OF SETTLEMENT
vs.)
U.S. CITIZENSHIP AND IMMIGRATION)
SERVICES, ET AL.)
DEFENDANTS.)

///

1 Plaintiffs in the above captioned matter, on behalf of themselves, the Class and all
2 Class Members (as defined below), and Defendants Michael B. Mukasey, the Attorney
3 General of the United States, the United States Department of State, the Department of
4 Homeland Security, by and through their undersigned counsel, hereby enter into this
5 Stipulation and Agreement of Settlement, subject to the approval of the Court pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure.

7 WHEREAS:

8 1. Wherever used in this Stipulation, the following terms have the meanings set forth
9 below:

10 a. "Action" means the above-captioned action pending in the United States
11 District Court for the Western District of Washington (docket No. 88-379R).

12 b. "Class member" means any Person included in the Class.

13 c. "Effective Date of Settlement" or "Effective Date" means the date upon
14 which the Settlement contemplated by this Stipulation shall become effective, as set forth
15 in paragraph 20 below.

16 d. "Plaintiff" or "Named Plaintiff" means the plaintiffs identified in the
17 amended complaint filed February 6, 2004, in this Action and "Defendant" or
18 "Defendants" means the defendants identified in the same complaint.

19 e. "Plaintiffs' Counsel" or "Class Counsel" means Peter Schey and Carlos
20 Holguin, Center for Human Rights and Constitutional Law, 256 S. Occidental Blvd., Los
21 Angeles, CA 90057, and Robert Gibbs and Robert Pauw, Gibbs, Houston Pauw, 1000
22 Second Ave, Suite 1600. Seattle, WA 98104.

23 f. "Released Parties" means any and all of the Defendants, their predecessors
24 and successors, their departments or agencies, and their past or present agents,
25 employees, and contractors.

26 g. "Settled Claims" means any and all actions, suits, claims, demands, rights,
27 liabilities, and causes of action, of every nature and description, whether known or
28 unknown, accrued or unaccrued, whether based on federal, state, local, statutory or
Settlement

1 common law or any other law, rule or regulation, that were asserted or that could have
2 been asserted or could be asserted in any forum, that the Plaintiffs, the Class, the Class
3 Members or any of them, or any of their heirs, representatives, attorneys, successors,
4 assigns, and any person they represent, in the past had, now have, or might in the future
5 have against the Defendants or any of them, which regard, concern, relate to, refer to,
6 arise out of, or are based upon, in any way: (a) the allegations, transactions, facts, matters,
7 occurrences, representations, omissions, disclosures, statements, failure to disclose or
8 action involved, set forth, referred to or that were, could be, or could have been asserted
9 in the Action, whether known or unknown, including without limitation Unknown
10 Claims as herein defined, and whether or not concealed or hidden; or (b) the Defendants'
11 defense of or settlement of the Action. Provided, however, that the definition of Settled
12 Claims shall not in any way impair or restrict the rights of the settling parties to enforce
13 the settlement via the dispute resolution provisions of this Stipulation at paragraphs 7 and
14 16. As used herein, "Unknown Claims" shall mean any and all actions, suits, claims,
15 demands, rights, liabilities, and causes of action that the Plaintiffs, the Class, or any of the
16 Class Members do not know of or suspect to exist in their favor at the time of the release
17 of the Released Parties, including but not limited to those that, if known by them, might
18 have affected their agreement to the Settlement. Any plaintiff or class member whose
19 application for legalization pursuant to Immigration and Nationality Act ("INA") section
20 245A is timely made under this settlement stipulation and is denied, may seek judicial
21 review of such denial only under INA section 245A(f)(4)(A) in the appropriate court of
22 appeals, upon review of a final order of removal (including a final order of deportation or
23 exclusion).

24 h. "Settlement" means the settlement contemplated by this Stipulation.

25 2. Defendants deny all liability with respect to the Action, deny that they have
26 engaged in any wrongdoing, deny the allegations in the Complaint filed in the Action,
27 deny that they committed any violation of law, deny that they acted improperly in any
28 way, and deny liability of any kind to the plaintiffs, the Class, or the Class Members, but

Settlement

1 have agreed to the settlement and dismissal of the Action with prejudice in order to: (i)
2 avoid the substantial expense, inconvenience, and distraction of continued protracted
3 litigation; and (ii) finally put to rest and terminate the Action and any and all Settled
4 Claims.

5 3. Class Counsel has conducted discussions and arms' length negotiations with
6 Defendants' Counsel with respect to a compromise and settlement of the Action with a
7 view to settling the issues in dispute and achieving the best relief possible consistent with
8 the interests of the Plaintiffs, the Class, and all Class Members.

9 4. Class Counsel have concluded that the terms and conditions of this Stipulation are
10 fair, reasonable, and in the best interests of the Plaintiffs, the Class, and all Class
11 Members; have agreed that the Released Parties should be released from the Settled
12 Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the
13 dismissal of the Action with prejudice, after considering the substantial benefits that the
14 Plaintiffs, the Class, and all Class Members will receive from settlement of the Action, the
15 risks of litigation, and the desirability of permitting the Settlement to be consummated as
16 provided by the terms of this Stipulation.

17 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the
18 parties to this Stipulation, through their respective attorneys, subject to the approval of
19 the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration
20 of the benefits flowing to the parties hereto from the Settlement, that the Settled Claims as
21 against the Released Parties shall be compromised, settled, forever released, barred, and
22 dismissed with prejudice, upon and subject to the following terms and conditions:

23 **Release; Scope and Effect of Release**

24 The obligations incurred pursuant to this Stipulation shall be in full and final
25 disposition of the Action with prejudice and of any and all Settled Claims as against all
26 Released Parties.

27 On the Effective Date, the Plaintiffs, the Class, and the Class Members, on behalf of
28 themselves, their heirs, executors, administrators, representatives, attorneys, successors,

Settlement

1 assigns, agents, affiliates and partners, and any Persons they represent (“Releasing
2 Parties”), shall be deemed to have, and by operation of the Final Judgment shall have
3 fully, finally, and forever released, relinquished, and discharged the Released Parties of
4 and from any and all of the Settled Claims, and the Releasing Parties shall be forever
5 barred and enjoined from bringing or prosecuting any Settled Claims against any of the
6 Released Parties. The terms of this paragraph do not limit the operation of paragraphs 7
7 and 16.

8 **1. Class Definition**

9 Members of the following class pursuant to Rule 23 of the Federal Rules of Civil
10 Procedure are entitled to relief pursuant to this Settlement Agreement:

11 All persons who entered the United States in a non-immigrant status prior to
12 January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A
13 of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated
14 Categories described below in paragraph 2, and who —

- 15 A) between May 5, 1987 and May 4, 1988, attempted to file a complete
16 application for legalization under § 245A of the INA and fees to an INS
17 officer or agent acting on behalf of the INS, including a Qualified
18 Designated Agency (“QDE”), and whose applications were rejected for
19 filing (hereinafter referred to as “Sub-class A members”); or
20 B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization
21 with an INS officer, or agent acting on behalf of the INS, including a QDE,
22 under § 245A of the INA, but were advised that they were ineligible for
23 legalization, or were refused legalization application forms, and for whom
24 such information, or inability to obtain the required application forms, was a
25 substantial cause of their failure to file or complete a timely written
26 application (hereinafter referred to as “Sub-class B” members); or
27
28

- 1 C) filed a legalization application under INA § 245A and fees with an INS
2 officer or agent acting on behalf of the INS, including a QDE, and whose
3 application
- 4 i. has not been finally adjudicated or whose temporary resident status
5 has been proposed for termination (hereinafter referred to as “Sub-
6 class C.i. members”),
- 7 ii. was denied or whose temporary resident status was terminated,
8 where the INS or CIS action or inaction was because INS or CIS
9 believed the applicant had failed to meet the “known to the
10 government” requirement, or the requirement that s/he demonstrate
11 that his/her unlawful residence was continuous (hereinafter referred
12 to as “Sub-class C.ii. members”).

13 **2. Enumerated Categories**

- 14 (1) Persons who violated the terms of their nonimmigrant status prior to
15 January 1, 1982 in a manner known to the government because
16 documentation or the absence thereof (including, but not limited to, the
17 absence of quarterly or annual address reports required on or before
18 December 31, 1981) existed in the records of one or more government
19 agencies which, taken as a whole, warrants a finding that the applicant was
20 in an unlawful status prior to January 1, 1982, in a manner known to the
21 government.
- 22 (2) Persons who violated the terms of their nonimmigrant visas before January
23 1, 1982, for whom INS/DHS records for the relevant period (including
24 required school and employer reports of status violations) are not contained
25 in the alien’s A-file, and who are unable to meet the requirements of 8 C.F.R.
26 §§ 245a.1(d) and 245a.2(d) without such records.
- 27 (3) Persons whose facially valid “lawful status” on or after January 1, 1982 was
28 obtained by fraud or mistake, whether such “lawful status” was the result of

- (a) reinstatement to nonimmigrant status;
- (b) change of nonimmigrant status pursuant to INA § 248;
- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

3. Notice to Class Members

A. General notice provisions

Defendants shall, within sixty (60) days from the date of the Court's final approval of this Settlement Agreement pursuant to Paragraph 18 below, issue a press release, and a Class Notice in English and Spanish (the texts of which are attached as Exhibit 1) announcing this Settlement Agreement. The press release, Class Notice, Class Member Worksheet (attached as Exhibit 2), and all necessary application forms shall be distributed to the media and community-based organizations according to CIS's normal procedure for doing so, with a copy of these lists provided to Class Counsel. The final Settlement, press release, Class Notice, Class Member Worksheet and Form I-687 shall at that time be posted on Defendants' web site in accordance with the regular practice for posting Forms and Settlement information on the site.

B. Individual notice to Sub-class C class members

Within 15 days of the district Court's final approval of this Settlement Agreement pursuant to Paragraph 18 below, Defendants shall forward an instruction to all District Offices, Regional Offices, and Service Centers to use reasonable efforts to identify Sub-class C members whose legalization applications were pending at any level of USCIS as of January 1, 2006. Within one week of issuing such instruction, Defendants shall provide a copy of the instruction to Plaintiffs' counsel. Within forty-five (45) days of the notice sent to District Offices, Regional Offices, and Service Centers, such offices shall use reasonable efforts to identify Sub-class C members whose legalization applications were pending at any level of USCIS. Defendants shall, within 90 days of the Court's final approval of this

Settlement

1 Settlement Agreement pursuant to Paragraph 18 below, forward to Plaintiffs' counsel a
2 list (in Excel format) containing the name, A-Number, SSN (if available) and last known
3 address of applicants in Sub-class C pursuant to the instruction mentioned above. This
4 list will be provided pursuant to an agreed Protective Order, attached hereto.

5 In the event that defendants identify further potential Sub-class C members within
6 one (1) year after providing the initial list to class counsel, defendants shall within 30 days
7 of so identifying additional class members provide plaintiffs' counsel with the same
8 categories of information as in the initial list of Sub-class C members.

9 **4. Application procedures**

10 **A. Distribution of application materials**

11 Within sixty (60) days of the Court's final approval of this Settlement Agreement
12 pursuant to Paragraph 18 below and during the remainder of the application period
13 specified in ¶¶ 4B and 4C Defendants shall make available at their district offices the final
14 Settlement, press release, Class Notice and Class Member Worksheet, and Form I-687.

15 Within sixty (60) days of the Court's final approval of this Settlement Agreement
16 pursuant to Paragraph 18 below and during the remainder of the application period
17 specified in ¶ 4, Defendants shall make available to all persons upon oral or written
18 request, including a request submitted through its forms webpage, a copy of Form I-687,
19 Class Member Worksheet and instructions, and Form I-765. All forms and instructions
20 shall be as agreed herein.

21 **B. Application Period for Sub-class A and Sub-class B Members**

22 Defendants shall, within ninety (90) days after the issuance of Notices required in ¶
23 3A above, commence accepting NWIRP/IAP Class Membership Worksheets and Forms I-
24 687, Application for Status as a Temporary Resident, with fee and supporting
25 documentation, from individuals who assert they are Sub-class A or Sub-class B class
26 members as defined above. Defendants shall thereafter continue to accept such
27 worksheets and applications for twelve (12) months.
28

1 Applications shall be deemed filed on the date postmarked in accordance with the
2 provisions at 8 C.F.R. § 245a.12(a)(2007). All I-687 applications and motions to reopen
3 showing prima facie eligibility under INA § 245A submitted within the time frames
4 outlined in this Settlement Agreement shall be deemed timely filed applications under
5 Immigration and Nationality Act § 245A.

6 **C. Application Period for Sub-class C Members**

7 **1. Applicants Who Filed Initially During the Regular Application**
8 **Period (May 1987-May 1988) and Are Still Pending a Final Decision**
9 **or whose Lawful Temporary Residence has been Proposed for**
10 **Termination.**

11 Defendants shall, after the issuance of Notices required in ¶ 3A above, commence
12 adjudicating all pending subclass C.i. applications in accordance with the terms of this
13 Settlement Agreement. The Defendants shall, within a reasonable time, either approve
14 the application, or send notice of this settlement agreement in the form of Exhibit 1 (either
15 with or without a notice of intent to deny or request for evidence).

16 Class members whose timely filed applications are still pending or who have
17 received a notice of proposed termination of the approval of their applications, may (but
18 are not required to) submit a **NWIRP Class Member Worksheet** (Exhibit 2) to the USCIS.
19 Such **NWIRP Class Member Worksheet**, together with any available copies of their
20 timely filed applications, receipts, and any notices that the former INS or the USCIS sent
21 them regarding their applications are to be sent to: NWIRP Worksheet, USCIS, National
22 Benefits Center, P.O. Box 9001, Lees' Summit, MO 64002-9001 .

23 **2. Applicants Who Initially Filed During the Regular Application**
24 **Period (May 1987-May 1988) and Have Received a Final Denial of**
25 **Their Application or whose Lawful Temporary Residence has been**
26 **Terminated.**

27 Applicants who initially filed during the regular application period and have
28 received a final denial of their applications or whose Lawful Temporary Residence has
been terminated (Subclass C.ii.) may file a class member worksheet and motion to reopen
on Form I-290B (Notice of Appeal to the Administrative Appeals Office) with fee, at any
Settlement

1 time, but no later than one year after receiving the notice under Paragraph 3. of this
2 agreement. If a class member worksheet and motion to reopen are to be denied as
3 untimely under this paragraph, the Defendants shall have the burden of proving that the
4 class member actually received the notice under Paragraph 3 of this agreement, provided
5 that the class member files or filed the class member worksheet and motion to reopen
6 while physically present in the United States and not from abroad. A completed **NWIRP**
7 **Class Member Worksheet** and motion to reopen on Form I-290B shall be filed with fee at
8 USCIS, PO Box 804727 , Chicago, Illinois, 60680-4108.

9 All I-687 applications and motions to reopen showing prima facie eligibility under
10 INA § 245A submitted within the time frames outlined in this Settlement Agreement shall
11 be deemed timely filed applications under Immigration and Nationality Act § 245A.

12 **5. Application fees**

13 There shall be no fee for filing a Class Member Worksheet. When under this
14 Settlement Agreement a filing fee may be charged, the fee shall be the fee applicable by
15 regulation or Federal Register Notice at the time of filing the application(s). Class
16 members who previously filed an I-687 with fee during the period May 5, 1987 to May 4,
17 1988 are not required under this Settlement Agreement to pay a new I-687 fee. However,
18 a Subclass C member whose I-687 application was previously denied, will be required to
19 pay the current motion to reopen filing fee to reopen the application

20 All class member applicants must file a Form I-765 with fee if they wish to receive
21 employment authorization. All applicants must pay the standard biometrics fee.

22 Applications timely filed and pending as of the date of this Settlement Agreement
23 under the settlements in *Catholic Social Services, Inc. v. Reno*, CIV No. S-86-1343 LKK (E.D.
24 Cal.), or *Newman; et al. v. Bureau of Citizenship and Immigration Services, et al.*, Civ. No. 87-
25 4757-WDK (C.D. Cal.), shall be adjudicated in accordance with the adjudications
26 standards described below in Paragraph 8B. No further fee is required of such applicants
27 in order for these provisions to apply.
28

1 Applications timely filed and pending as of the date of this Settlement Agreement
2 under § 1104 of the Legal Immigration Family Equity Act (LIFE Act), Title XI of H.R. 5548,
3 enacted by reference in Public Law 106-553 (Dec. 21, 2000), and the LIFE Act
4 Amendments, Title XV of H.R. 5666, *enacted by reference in* Public Law 106-554 (Dec. 21,
5 2000), shall be adjudicated in accordance with the adjudications standards described
6 below in ¶ 8B. No further fee is required of such applicants in order for these provisions
7 to apply.

8 CSS, *Newman*, and LIFE Act § 1104 applicants whose applications have been denied
9 but are approvable under the standards established in this settlement may file motions to
10 reopen in accordance with ¶ 4C2 above.

11 **6. Adjudication of Class Member Worksheets**

12 **A. Adjudicatory standard**

13 NWIRP Class Membership Worksheets shall be approved if, based on responses to
14 questions asked on the Worksheet, it appears more probable than not that the applicant
15 meets the class definition. A determination that an applicant is a class member is not
16 binding on Defendants for the purposes of an adjudication on the merits of the
17 application for temporary residence, which shall be conducted *de novo*. Class Member
18 Worksheets and any accompanying evidence of entry on a non-immigrant visa prior to
19 January 1, 1982, shall not be disapproved solely because applicants do not possess
20 Government-issued records establishing class membership. Applicants, other than
21 Subclass C members, shall attach to the Class Member Worksheet any available evidence
22 regarding their non-immigrant entry into the United States before January 1, 1982,
23 including, for example, copies of passports, entry stamps, visa applications, I-94's, I-20's,
24 airline travel records, documents showing that they were present in the United States in
25 non-immigrant status prior to or shortly after January 1, 1982, or credible declarations
26 regarding entry prior to January 1, 1982 with a non-immigrant visa. If an applicant does
27 not possess or is unable to obtain this type of evidence, the applicant may submit a sworn
28 statement that identifies: (1) the U.S. Consulate where the pre-1982 non-immigrant visa

1 was applied for, (2) the approximate date that it was obtained, (3) the type of visa
2 obtained, (4) the approximate date when the visa was used to enter the United States,
3 (5) where the applicant entered the United States using the non-immigrant visa, and
4 (6) includes a brief description of any activities that the class member engaged in
5 consistent with the terms of the visa immediately after entering the United States.

6 Applicants may also request that the USCIS check its records, prior to an adjudication of
7 the Worksheet, to determine if any evidence exists of the alien's nonimmigrant entry prior
8 to January 1, 1982. If the applicant has (1) failed to sign a Class Member Worksheet or I-
9 687, or (2) failed to attach an appropriate fee, or (3) on the Class Member Worksheet or I-
10 687 failed to state that he commenced unlawful residence prior to January 1, 1982, or (4) is
11 clearly statutorily ineligible based on documents submitted with the application, then the
12 application can be rejected as improperly filed, and returned to the applicant. If the
13 application is rejected as improperly filed, then the application will be returned to the
14 applicant with an explanation for the rejection. The applicant may resubmit the
15 application in proper form within the filing period.

16 In order for a person to be eligible for benefits under this lawsuit, he or she must be
17 *prima facie* eligible for legalization, as that term is defined in 8 C.F.R. § 245a.1(n). A person
18 who claims eligibility as a derivative beneficiary (the spouse or child of a person who was
19 turned away by INS or a QDE during the legalization application period) must establish
20 that (1) the qualifying family relationship existed at the time the primary applicant was
21 turned away by INS or a QDE; and (2) he or she is otherwise eligible for legalization in his
22 or her own right.

23 **B. Notice of intent to deny**

24 Before denying an application for class membership, Defendants shall forward the
25 applicant or his or her representative a notice of intended denial explaining the perceived
26 deficiency in the applicant's Class Member Worksheet and providing the applicant thirty
27 (30) days to submit additional written evidence or information to remedy the perceived
28 deficiency.

1 **C. Written notice of reasons for denying class member worksheet**

2 Defendants shall send a written notice of any decision to deny a Class Member
3 Worksheet to the applicant and to his or her attorney of record, with a copy to Class
4 Counsel. The notice shall explain the reason for the denial of the Worksheet, and notify
5 the applicant of his or her right to seek review of such denial by a Special Master, on the
6 document attached as Exhibit 3. On review, neither Defendants nor the applicant shall be
7 permitted to submit new evidence to the Special Master.

8 **D. Approval of Class Member Worksheet of Applicants under Subclass C.ii.**

9 Upon approval of the Class Member Worksheet for Applicants under Subclass
10 C.ii., the Defendants shall reopen the denied I-687 or termination proceedings under 8
11 C.F.R. § 245a.2(u). Defendants shall adjudicate the reopened forms I-687 and termination
12 proceedings under the terms of paragraph 8 of this Agreement.

13 **7. Review by Special Master**

14 **A. Selection of the Special Master.**

15 Each party shall select one person, from a list of three names recommended by the
16 other party, to serve as a Special Master. Appeals from denial of applications for class
17 membership shall be assigned randomly to a Special Master. The two Special Masters
18 shall jointly designate the mailing address for appeals and determine procedures for
19 random assignment.

20 **B. Review of Decisions Involving Determination of Class Membership.**

21 Any decision by the Defendants denying an application for class membership may
22 be appealed to a Special Master. Any such appeal must be post-marked within thirty (30)
23 days of the date of mailing of the notice denying the application for class membership.
24 The Special Masters' review shall be a record review, based on the documents and other
25 evidence submitted by the applicant, and any documentary evidence relied upon by the
26 Defendants in reaching the decision to deny the application for class membership.

27 The Special Masters shall be paid a fee of \$125 for adjudicating each appeal under
28 this subparagraph. Payment of this fee shall be borne by the applicant. If the applicant

Settlement

prevails, and it is determined to be a class member, the fee of \$125 shall be refunded to the Applicant by defendants as court costs per order of the Special Masters.

C. Review of Other Decisions.

An applicant who believes that Defendants have violated his or her individual rights pursuant to ¶¶ 3, 4, 5, 6, 10B, or 11, of this Settlement Agreement may file a claim with the Special Masters. However, prior to filing any such claim, the applicant must advise Defendants by certified mail, or other documented delivery service to an address specified by Defendants, within 90 days of the discovery of the alleged violation that he or she believes that Defendants have violated his or her rights under such paragraphs. Defendants shall have forty-five (45) days from the date they are notified of the applicant's intent to file a claim under this paragraph in which to investigate and, if appropriate, rectify any deficiency. If within fifty (50) days after notifying Defendants of his or her intent to file a claim, the applicant does not receive notice that Defendants have sustained the applicant's challenge, then the applicant may file his or her appeal to a Special Master. Any such appeal must be post-marked within eighty (80) days of the date the applicant advised Defendants of the alleged violation.

The Special Masters shall be paid a fee of \$65 for adjudicating each appeal under this subparagraph C. The applicant must pay the entire fee at the time he or she files the notice of appeal. If the applicant prevails on the merits of his or her appeal, the fee of \$65 shall be refunded to the Applicant by defendants as court costs per order of the Special Master.

8. Adjudication of Applications for Temporary and Permanent Residence

A. General adjudicatory standards

Defendants shall utilize the standards set forth in 8 C.F.R § 245a.18(d), or 8 C.F.R. § 245a.2(k)(4), which ever is more favorable to the applicant. Failure to provide evidence other than affidavits shall not be the sole basis for finding that an alien failed to meet the continuous residence and physical presence requirements. For purposes of establishing residence and presence of subclass A and subclass B members within the meaning of 8

Settlement

1 C.F.R. § 245a.2(b), the term “until the date of filing” shall mean until the date the alien
2 visited an INS or QDE office consistent with the Class Definition. In evaluating the
3 sufficiency of applicant’s proof of residence, Defendants shall take into account the
4 passage of time and attendant difficulties in obtaining corroborative documentation of
5 unlawful residence.

6 Where a Request for Evidence or Notice of Intent to Deny has been issued, an
7 application shall not be denied as abandoned pursuant to 8 C.F.R. § 103.2(b)(13) unless the
8 applicant is notified in writing of the consequences of failure to respond, including the
9 absence of a right to appeal, and informed of his/her right to a decision on the existing
10 record that may be appealed if the applicant notifies the CIS that he or she does not have
11 additional evidence to present.

12 An applicant’s appearance at an interview shall constitute a “request for a
13 decision” based on the evidence submitted for purposes of 8 C.F.R. § 103.2(b)(14).

14 **B. Standard for determining whether unlawful status “known to the**
15 **Government” or “continuity” of unlawful residence.**

16 With respect to the “known to the government” requirement in INA §
17 245A(a)(2)(b), Defendants shall adjudicate or readjudicate class members’ eligibility for
18 temporary residence in accordance with the following procedures:

19 1. With respect to individuals within Enumerated Category 1 and the “known to
20 the government” requirement of 8 U.S.C. § 1255a(a)(2)(B), the burden of proof shall shift
21 as follows: an applicant must make a *prima facie* showing that prior to January 1, 1982, the
22 applicant violated the terms of his or her non-immigrant status in a manner known to the
23 government because documentation or the absence thereof (including, but not limited to,
24 the absence of quarterly or annual address reports required on or before December 31,
25 1981) existed in the records of one or more government agencies which, taken as a whole,
26 warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in
27 a manner known to the government. Once the applicant makes such a showing, USCIS
28 then has the burden of coming forward with proof to rebut the evidence that the

1 applicant violated his or her status. If the USCIS fails to carry this burden, then it will be
2 found that the alien's unlawful status was known to the government as of January 1, 1982.
3 If USCIS does rebut the evidence that the applicant violated his status, the applicant must
4 then show by a preponderance of the evidence that he or she was in unlawful status for
5 some other reason and that this unlawful status was known to the government. At all
6 times, the applicant carries the burden of persuasion to prove eligibility for legalization.
7 Unrebutted evidence of the lack of required § 265 address reports from agency files shall
8 establish that the applicant's unlawful status was known to the government within the
9 meaning of 8 U.S.C. § 1255a(a)(2)(B).

10 2. With respect to individuals within Enumerated Category 2 and the "known to
11 the government" requirement of 8 U.S.C. § 1255a(a)(2)(B), the burden of proof shall shift
12 as follows: an applicant must make a prima facie showing that he or she violated the
13 terms of his or her duration of status visa prior to January 1, 1982. It is presumed that the
14 school or employer complied with the law and reported violations of status to the INS.
15 Upon an applicant's presenting prima facie evidence that he or she violated the terms of
16 his or her non-immigrant status, USCIS then has the burden to come forward with
17 evidence either that unlawful status did not occur through the passage of time or to rebut
18 the presumption that the unlawful status was reported to the government. The absence of
19 the school or employer report in government records is not alone sufficient to rebut this
20 presumption. If USCIS fails to carry this burden, then it will be found that the alien's
21 unlawful status was known to the government as of January 1, 1982. If USCIS comes
22 forward with this evidence, the applicant must show by a preponderance of the evidence
23 that he or she is eligible for legalization under either the "passage of time" or "known to
24 the government" standards. The applicant always has the burden of persuasion on this
25 point.

26 3. With respect to individuals within Enumerated Category 3, defendants shall
27 adhere to Matter of N, 19 I. & N. 760 (BIA 1988) (status obtained by fraud or mistake), in
28 adjudicating or re-adjudicating their applications for legalization or adjustment to lawful

1 permanent resident status. The alien bears the burden of establishing that he or she
2 obtained "lawful" status by fraud or mistake.

3 **C. Administrative appeals**

4 The Administrative Appeals Office shall adjudicate such appeals in accordance
5 with the standards set forth in this Settlement Agreement. Applicants are entitled to work
6 authorization during the pendency of such appeals as provided in INA § 245A. Appeals
7 and motions to reopen properly presented to the Administrative Appeals Office showing
8 prima facie eligibility under INA § 245A shall be deemed timely filed applications under
9 Immigration and Nationality Act § 245A.

10 **9. Issuance or Renewal of Employment Authorization and Travel Authorization**

11 **A. Employment Authorization.**

12 Defendants shall issue employment authorization to class members pursuant to 8
13 C.F.R. § 245a.2(n) and 8 C.F.R. § 274a.12(c)(22). Class member applications for
14 employment authorization and renewal of employment authorization shall be accepted
15 and adjudicated in accordance with 8 C.F.R. § 274a.13.

16 **B. Advance Parole**

17 Defendants shall adjudicate advance parole requests made by class members
18 pursuant to 8 C.F.R. § 212.5(f) and 8 C.F.R. § 245a.2(m), & (n).

19 **10. Time for Determining Class Membership and Legalization Applications**

20 **A. Class member worksheets**

21 Defendants shall use good faith and reasonable efforts either to approve Class
22 Membership Worksheets or to issue notices of intended denials of same within one
23 hundred and twenty (120) days of the date such applications are received by CIS. If a
24 notice of intended denial is issued, defendants shall endeavor to issue a final decision on
25
26
27
28

1 the application for class membership within ninety (90) days after receipt of an applicant's
2 supplemental evidence or explanation, if any.

3 **B. Legalization applications**

4 Defendants shall use good faith and reasonable efforts to adjudicate I-687 or I-698
5 forms filed by class members within one hundred and eighty (180) days of the approval of
6 their Class Membership Worksheet. "Adjudication" as used in this paragraph includes
7 the mailing of a request for additional evidence or issuance of a notice of intent to deny.
8 The time it takes an applicant to respond to a request for additional evidence or a notice of
9 intent to deny shall not be included in the period of adjudication.

10 **C. Adjustment for high volume**

11 If the aggregate volume of Form I-687 applications received under this Settlement
12 Agreement and the Settlement Agreements reached in *CSS v. Ridge*, S86-1343-LKK (E.D.
13 Cal); *Newman v. DHS*, Civ 87-4757-WDK (C.D. Cal), exceeds two hundred forty thousand,
14 it is anticipated that the approximate processing times referenced in subparagraphs A and
15 B above will double. In the event Defendants believe good cause exists to extend the time
16 periods set forth above, such as in the case of excessive fraud, unexpected geographic
17 distribution of applications and skeletal applications, Defendants shall provide Class
18 Counsel with a written explanation of such cause and proposed alternative target periods.
19 The parties shall meet and confer in a good faith effort to resolve any disagreements over
20 proposed new target periods prior to petitioning this district court pursuant to ¶ 16
21 below.

22 **11. Confidentiality of Applications**

23 Subject to the terms of the attached Stipulation and Order of Protection Regarding
24 Privacy Act Information and Information Covered by 8 U.S.C. § 1255A(c)(5), Defendants
25 shall treat all applications, Class member worksheets, and materials filed pursuant to this
26 Settlement Agreement, including applications for employment authorization and advance
27 parole as confidential in accordance with 8 U.S.C. § 1255a(c)(5). The confidentiality
28

provisions in existence at the time of the access, use or disclosure of information in applications determines the whether the access, use or disclosure is permissible.

12. Reporting on Implementation of This Agreement

Defendants shall file with Plaintiffs' counsel reports of their compliance with the provisions described in ¶¶ 3-4. In addition, commencing four months after the beginning of the filing period referenced in ¶ 4, Defendants shall prepare quarterly reports setting forth the cumulative number of Subclass A and B Class Membership applications, Forms I-687, and Forms I-765, that were received, approved, denied and pending. Copies of such reports shall be provided to Class Counsel, within 30 days of the close of each quarter.

13. Costs and Attorneys Fees

Defendants will pay plaintiffs attorneys fees and costs, as determined by a separate agreement, hereby incorporated into this Settlement Agreement. Plaintiffs shall bear any costs incurred by plaintiffs in connection with notifying the class of the terms and conditions of this Stipulation.

14. Duration of Agreement

Unless the Settlement Agreement is terminated as provided at paragraph 21, and except as provided in paragraph 4C2, the Settlement Agreement will remain in effect for one year after the Defendants adjudicate the last I-687 application filed by a class member. Defendants agree to promptly notify Class Counsel of the date it adjudicates the last such application.

15. Dismissal of Complaint, Dissolution of Injunctive Orders and Other Decisions

In the event the district court approves this Settlement Agreement, the parties will seek dismissal of this action pursuant to Paragraph 19 below. If the district court does not approve settlement, this Settlement Agreement is null and void.

16. Continuing Jurisdiction

The parties agree that notwithstanding the filing and granting of any motion pursuant to ¶ 15, the district court will retain jurisdiction in this action over only the

Settlement

1 matters described in A and B below. Defendants reserve and do not waive any defenses
2 that they may have to a claim brought under this paragraph, including defenses without
3 limitation already raised in the litigation and defenses that may arise under new laws or
4 regulations.

5 A. Claims by Plaintiffs or Defendants that either party has engaged in a pattern
6 and practice of refusing to implement any of the relief set forth in this Agreement.

7 B. Claims by Plaintiffs that Defendants have expressly repudiated this Agreement.

8 C. As a prerequisite to bringing any such claim, at least sixty (60) days prior to
9 bringing any action pursuant to this provision, the parties shall meet and confer in a good
10 faith effort to resolve any of their differences. The party alleging non-compliance has the
11 burden of initiating the meet and confer. The parties agree that the Court lacks
12 jurisdiction where there has been no meaningful effort by the movant to first meet and
13 confer pursuant to this provision.

14 D. Any action under this provision must be brought no later than one year after
15 Defendants adjudicate the last I-687 legalization application filed by a class member.

16 **17. Class Counsel**

17 Class Counsel for the purposes of this Settlement Agreement are Robert H. Gibbs
18 and Robert Pauw, Gibbs, Houston and Pauw, 1000 Second Ave, Suite 1600, Seattle, WA
19 98104 (206) 682-1080, and Peter Schey and Carlos Holguín, Center for Human Rights and
20 Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057 (213) 388-8693. Each
21 document required to be served on Class Counsel under this Agreement will be served on
22 the Class Counsel designated to receive such document by Class Counsel pursuant to this
23 paragraph within 20 days of the Court's approving this Settlement Agreement.

24 **18. Approval of Agreement**

25 This Agreement has been approved by authorized representatives of the Secretary
26 of the U.S. Department of Homeland Security, and the Assistant Attorney General, United
27 States Department of Justice.
28

This Agreement is subject to approval by the United States District Court pursuant to Federal Rule of Civil Procedure 23. Concurrently with their filing of this Stipulation, Class Counsel and Defendants' Counsel shall jointly apply to the Court for preliminary Court approval of the Settlement contemplated by this Stipulation and entry of a Preliminary Approval Order, substantially in the form appended hereto as Exhibit 4. Such Preliminary Approval Order will seek approval of a Notice to the Class, as well as a finding that the following satisfies the publication requirements of Fed. R. Civ. P. 23: (1) Defendants shall post the Settlement Agreement and the Exhibits attached to the Settlement Agreement in appropriate places on the USCIS website. www.uscis.gov (2) Plaintiffs shall post the Settlement Agreement and the Exhibits attached to the Settlement Agreement in appropriate places on plaintiffs' counsels' websites. www.centerforhumanrights.org and www.ghp-law.net (3) Defendants shall distribute the Settlement agreement and the Exhibits attached to the Settlement agreement to all immigration assistance providers listed, as of the Effective Date of this Settlement, on the Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review pursuant to 8 C.F.R. § 292 and § 1292, and the Pro Bono Program section of the EOIR website.

19. Terms of Order and Final Judgment

If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter Final Judgment and dismissal of this action substantially in the form appended hereto as Exhibit 5.

20. Effective Date of Settlement, Waiver or Termination

The Effective Date of this Stipulation shall be the date when all the following shall have occurred:

- (A) entry of the Preliminary Approval Order in all material respects in the form appended hereto as Exhibit 4;
- (B) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

Settlement

(C) entry by the Court of Final Judgment, in all material respects in the form appended hereto as Exhibit 5, and the expiration of any time for appeal or review of such Final Judgment, or, if any appeal is filed and not dismissed, after such Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none of the parties hereto elects to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review by writ of certiorari.

21. Termination of Settlement and Stipulation

Defendants’ Counsel or Class Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) days of (a) the Court’s declining to enter the Preliminary Approval Order or modification of that Preliminary Approval Order in any material respect; (b) the Court’s declining to approve the Settlement embodied in this Stipulation, or any material part of it; (c) the Court’s declining to enter the Final Judgment or modification of the Final Judgment in any material respect; (d) the date upon which the Final Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or the United States Supreme Court; or (e) the date upon which an Alternative Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or by the United States Supreme Court.

Except as otherwise provided herein, in the event the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Stipulation; and except as otherwise expressly provided, the parties shall proceed

Settlement

1 in all respects as if this Stipulation and any related orders had not been entered. In the
2 event the Settlement is terminated or modified in any material respect, the Defendants
3 shall be deemed not to have waived, modified, or be estopped from asserting any
4 additional defenses available to them.

5 **22. No Admission of Wrongdoing**

6 This Stipulation, whether or not consummated, and any proceedings taken
7 pursuant to it:

8 (A) shall not be construed to waive, reduce or otherwise diminish the
9 authority of the Defendants to enforce the laws of the United States against class members
10 notwithstanding the terms of this Stipulation, consistent with the Constitution and laws of
11 the United States.

12 (B) shall not be offered or received against the Defendants as evidence of,
13 or construed as or deemed to be evidence of, any presumption, concession, or admission
14 by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of
15 any claim that had been or could have been asserted in the Action or in any litigation, or
16 the deficiency of any defense that has been or could have been asserted in the Action, or
17 of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by
18 the Defendants of any violations of, or failure to comply with, the Constitution, laws or
19 regulations.

20 (C) shall not be offered or received against the Defendants as evidence
21 that failure to provide documents within the time frame set forth herein, or within any
22 time frame, is unjustified or illegal; and
23
24
25
26
27
28

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

23. Additional Provisions

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

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

C. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

D. The headings herein are used for the purpose of convenience only and are not intended to have legal effect.

E. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

F. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto other than those contained and memorialized in such documents.

1 G. This Stipulation may be executed in one or more counterparts. All executed
2 counterparts and each of them shall be deemed to be one and the same instrument
3 provided that counsel for the parties to this Stipulation shall exchange among themselves
4 original signed counterparts.

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

7 I. This Stipulation shall not be construed more strictly against one party than
8 another merely by virtue of the fact that it, or any part of it, may have been prepared by
9 counsel for one of the parties, it being recognized by the parties that this Stipulation is the
10 result of arms' length negotiations between the parties and that all parties have
11 contributed substantially and materially to the preparation of this Stipulation.

12 J. All counsel and any other person executing this Stipulation and any of the
13 exhibits hereto, or any related settlement documents, warrant and represent that they
14 have the full authority to do so and that they have the authority to take appropriate action
15 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

16 K. Class Counsel and Defendants' Counsel agree to cooperate fully with one
17 another in seeking Court approval of the Preliminary Order in Connection with the
18 Settlement Proceedings, the Stipulation and Agreement of Settlement, and to promptly
19 agree upon and execute all such other documentation as may be reasonably required to
20 obtain final approval by the Court of the Settlement.

21
22
23
24
25
26
27 Dated: September 8, 2008.
28

Settlement

1 GIBBS, HOUSTON PAUW
2 Robert H. Gibbs, WSBA 5932
3 Robert Pauw

CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Peter A. Schey
Carlos R. Holguin

4 ALTSHULER, BERZON, NUSSBAUM,
5 RUBIN & DEMAIN
6 Michael Rubin
7 177 Post Street, Suite 300
8 San Francisco, CA 94108
9 (415) 391-1655

10 /s/ Robert H. Gibbs

11 Robert H. Gibbs
12 WSBA Number 5932
13 GIBBS HOUSTON PAUW
14 1000 Second Ave, Suite 1600
15 Seattle, WA 98104
16 Telephone: (206) 224-8790
17 Fax: (206) 689-2270
18 E-mail: rgibbs@ghp-law.net

19 *Counsel for Plaintiffs*

20
21
22 ///

23
24
25
26 Dated: September 8, 2008

27 Anthony Norwood
28 U.S. Department of Justice
Office of Immigration Litigation

Settlement

/s/ Peter A. Schey

Peter A. Schey
Cal. Bar Number 58232
CENTER FOR HUMAN RIGHTS
& CONSTITUTIONAL LAW
256 S. Occidental Blvd.
Los Angeles, CA 90057
Telephone: (213) 388-8693
Fax: (213) 386-9484
E-mail: pschey@centerforhumanrights.org

1 P.O. Box 878, Ben Franklin Station
2 Washington, DC 20044
3 202-353-9777

4 /s/ Anthony Norwood

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

Settlement