

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KELLEY AMADEI, CAROLA CASSARO, LAURA
CUCULLU, COREY FIELDS, ANNE GARRETT,
AMY LANIGAN, MATT O'ROURKE, ERIC POLK,
and KAREN POLK,

Plaintiffs,

- against -

KEVIN K. MCALEENAN, Acting Secretary of
Homeland Security, named in his official capacity,

MARK A. MORGAN, Senior Official Performing the
Functions and Duties of the Commissioner of U.S.
Customs and Border Protection, named in his official
capacity,

TROY A. MILLER, Director, New York Field
Operations, U.S. Customs and Border Protection,
named in his official capacity,

FRANCIS J. RUSSO, Port Director, JFK International
Airport Port of Entry, U.S Customs and Border Protection,
named in his official capacity,

MATT ALBENCE, Acting Director, U.S. Immigration
and Customs Enforcement, named in his official capacity,

SUSAN QUINTANA, Director, New York Field Office,
Enforcement and Removal Operations, U.S. Immigration
and Customs Enforcement, named in her official capacity,

DAVID JENNINGS, Director, San Francisco Field Office,
Enforcement and Removal Operations, U.S. Immigration
and Customs Enforcement, named in his official capacity,

JOHN DOES 1 and 2, U.S. Customs and Border Protection
Officers, named in their official capacity,

Defendants.
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**SETTLEMENT
AGREEMENT**

Civil Action No.
17-cv-5967

(Garaufis, J.)
(Scanlon, M.J.)

This Settlement Agreement is entered into, by and through the parties' undersigned attorneys, between Plaintiffs KELLEY AMADEI, CAROLA CASSARO, LAURA CUCULLU, COREY FIELDS, ANNE GARRETT, AMY LANIGAN, MATT O'ROURKE, ERIC POLK, and KAREN POLK (collectively "Plaintiffs"), and Defendants KEVIN K. MCALEENAN, in his official capacity as Acting Secretary of Homeland Security, MARK MORGAN, in his official capacity as Senior Official Performing the Functions and Duties of the Commissioner of U.S. Customs and Border Protection, TROY A. MILLER, in his official capacity as Director of New York Field Operations for U.S. Customs and Border Protection, FRANCIS J. RUSSO, in his official capacity as Port Director of John F. Kennedy International Airport for U.S. Customs and Border Protection, MATT ALBENCE, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, SUSAN QUINTANA, in her official capacity as Director of the New York Field Office for U.S. Immigration and Customs Enforcement, and DAVID JENNINGS, in his official capacity as Director of the San Francisco Field Office for U.S. Immigration and Customs Enforcement (collectively "Defendants" or "United States of America").

WHEREAS, on October 12, 2017, Plaintiffs commenced the above-captioned civil action seeking declaratory and injunctive relief; and

WHEREAS, all parties now desire to resolve this litigation in an amicable fashion, with finality and without further need for court intervention.

IT IS NOW HEREBY AGREED, by and among the parties to this civil action, as follows:

1. U.S. Customs and Border Protection ("CBP") will disseminate to the Office of Field Operations ("OFO") a muster that will contain the following language:

On February 22, 2017, two uniformed CBP officers met Delta Air Lines Flight 1583, a domestic flight from San Francisco International Airport to John F. Kennedy International Airport. The officers stood near the aircraft door and checked the identification of passengers as they deplaned. Following this incident, nine of the passengers filed a lawsuit against CBP in the Eastern District of New York alleging that the identification check was not voluntary. In response to the lawsuit and the events of February 22, 2017, please be aware of the following:

- a. CBP Office of Field Operations does not have a policy or routine practice of compelling or requesting that passengers deplaning domestic flights submit to suspicionless document checks. [Note: "domestic flights" is defined according to FAA regulations, 14 C.F.R. 241.03, as "flight stages with both terminals within the 50 states of the United States and the District of Columbia"].
- b. Encounters between CBP Office of Field Operations Officers ("CBPOs") and domestic air passengers must not contravene the Fourth Amendment.
- c. To the extent that CBPOs seek to conduct consensual encounters with domestic air passengers, officers will ensure to the extent feasible that they are positioned in a way that does not impede passengers' ability to deplane. They will further ensure that their words and actions communicate that passenger cooperation is voluntary. If a passenger asks, officers should communicate that passengers who decline to cooperate will not suffer any enforcement consequence as a result.
- d. CBPOs conducting consensual encounters with passengers deplaning a domestic flight will to the extent feasible (1) verbally advise passengers that their cooperation is voluntary; (2) request that airline personnel make similar announcements over public announcement systems; and (3) situate themselves in

a position such that passengers who decline to cooperate have an unimpeded path to exit.

2. OFO will distribute the muster to CBP OFO ports of entry nationally within forty-five days of the signing of this Settlement Agreement and the Stipulation and Order of Dismissal. The muster will again be disseminated for subsequent distribution to CBP OFO ports of entry nationally in August 2021. Attorneys for Defendants will notify attorneys for Plaintiffs in writing following the issuance of each muster.

3. The United States of America shall pay to the American Civil Liberties Union the amount of ten thousand dollars (\$10,000.00), and to Covington & Burling LLP the amount of thirty thousand dollars (\$30,000.00), as attorneys' fees, expenses, and costs Plaintiffs' counsel incurred in connection with this action ("Attorneys' Fees"). Payment of the Attorneys' Fees of forty thousand dollars (\$40,000.00) will be made by government wire transfer as per directions from Plaintiffs' counsel that are set forth in the attached addendum. This paragraph shall not be construed to include a finding that the position of the Defendants in this litigation was not substantially justified or that the Defendants are liable as a matter of law for the payment of attorneys' fees, expenses, and costs. The provision of attorneys' fees, expenses, and costs is solely by agreement of the parties and shall not serve as precedent in any other case. For purposes of this paragraph, "Defendants" shall include the Defendants, their successors, and any of their officers, employees, agents, or assigns.

4. The terms set forth in paragraphs 1, 2, and 3 herein are made in full and final settlement of any and all claims Plaintiffs, or any of their respective heirs, executors, successors, and assigns, may now have or may hereafter have against Defendants in connection with this action. Other than what is specifically set forth in paragraph 3 herein, Plaintiffs expressly waive

and release Defendants from all liability for all claims for attorneys' fees, expenses, and costs (including but not limited to any claims under the Equal Access to Justice Act, 28 U.S.C. § 2412) which the Plaintiffs may now have or may hereafter have in connection with any and all claims and causes of action which have been or could have been asserted in this action, concerning any of the matters alleged in this action.

5. In consideration for the covenants and undertakings of Defendants set forth in this Settlement Agreement, Plaintiffs, collectively and individually, withdraw and voluntarily dismiss the complaint in this action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii); and forever waive and release Defendants, their successors, and any of their officers, employees, agents, or assigns, in perpetuity, and hold them harmless, from any claim arising out of or relating to the claims or allegations set forth in the complaint in this action. The parties shall execute the Stipulation and Order of Dismissal at the same time as this Settlement Agreement. Attorneys for Plaintiffs will file the Stipulation and Order of Dismissal with the Court no later than five calendar days from the date that attorneys for Defendants have notified attorneys for Plaintiffs in writing regarding the first issuance of the muster (as set forth in paragraph 2 herein), and payment (as set forth in paragraph 3 herein) has been rendered, whichever date shall be later.

6. The parties agree to comply with paragraph 20 of the Stipulation and Order for the Protection of Documents and Information that was filed on May 4, 2018 and "so ordered" by the Court on May 7, 2018.

7. This Settlement Agreement contains all the terms and conditions agreed upon by and between the parties. No oral agreement between Plaintiffs and Defendants entered into at any time, nor any written agreement between Plaintiffs and Defendants entered into prior to the execution of this Settlement Agreement regarding the subject matter of the instant proceeding,

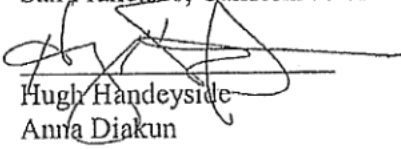
shall be deemed to have any force or effect, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
July 10, 2019

AMERICAN CIVIL LIBERTIES UNION
Attorneys for Plaintiffs
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New York, New York 10004

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San Francisco, California 94111

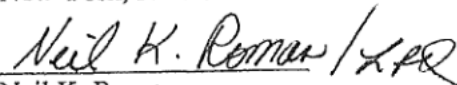
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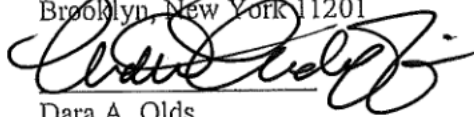
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Neil K. Roman
Joshua B. Picker

Dated: Brooklyn, New York
July 10, 2019

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