

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARIA WALTERS, et al.,	)	No. C94-1204C
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	
	)	
	)	
	)	SETTLEMENT AGREEMENT
	)	
JANET RENO, et al.,	)	
	)	
Defendants.	)	
	)	

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**SETTLEMENT AGREEMENT**

**I. RECITALS**

- (A) Parties: The parties to this Settlement Agreement ("Agreement") are:
- (1) The plaintiffs and class representatives: Maria Adayde Walters, Cesar Corona-Alvarez, Ninfa Guerrero de Adames, Antonio Santana Alvarez, Camila Cruz-Garcia, and Omar Kayyam Meziab;
  - (2) The class represented by plaintiffs; and
  - (3) The defendant officials and employees of the United States Immigration and Naturalization Service ("INS"): Janet Reno, Attorney General; Doris M. Meissner, Commissioner, INS; and the Department of Justice.

- (B) Amendment of Class: On or before the date this Agreement is submitted to the Court for final approval, the parties shall submit a joint motion for recertification of the class to include: "All non-citizens who waived or failed to request a hearing under Section 274C of the Immigration and Nationality Act ("INA") after being served with the charging and notice forms challenged in this action." All parties acknowledge that the preceding definition modifies the class definition established by the Court.
- (C) Jurisdiction: The parties do not dispute that the Court has jurisdiction over the parties and the subject matter of this action, and that it may appropriately enter an order approving this Agreement.

The parties agree that the Court will not retain continuing jurisdiction to supervise the implementation of this Agreement, or to enforce its terms, except as specifically stated in section VI(E)-(F) below.

- (D) Intention of the Parties: The parties desire to resolve this litigation by entering into this Agreement, thereby avoiding the time and expense of further litigation of claims made by the plaintiffs. This Agreement is intended to dispose of every claim that was raised against defendants in their official and individual capacities in this lawsuit. The parties acknowledge that this Agreement is fully binding upon them, and on each of their successors during the life of the Agreement. By entering into this Agreement, defendants do not admit to any violations of, or failure to comply with, the Constitution, laws or regulations. Plaintiffs acknowledge that this Agreement is fully dispositive of all issues in the lawsuit both as they relate to themselves and to all members of the class.

## **II. REVISED SECTION 274C NOTICE OF INTENT TO FINE FORM**

The following provisions apply to the development and use of the revised section 274C Notice of Intent to Fine ("NIF") form:

- (A) The Immigration and Naturalization Service ("INS") will discontinue the use of the versions of the section 274C NIF and Notice of Rights/Waiver forms challenged in this action to give notice of proceedings under section 274C of the Immigration and Nationality Act ("INA") or to obtain waivers of the right to a section 274C hearing.
- (B) The parties agree that the revised section 274C NIF form (see attached) fully and accurately communicates the nature and consequences of the section 274C charges, the procedures for contesting them, and the importance and separate nature of section 274C proceedings from deportation or removal proceedings.
- (C) The INS will neither solicit nor accept waivers of the right to a section 274C hearing from individuals served with the revised section 274C NIF form. The INS, however, retains the right to initiate, at its discretion, at any time in the future, the practice of accepting waivers of the right to a section 274C hearing from individuals served with the revised section 274C NIF form. Any new waiver form will adequately communicate the nature and consequences of the section 274C charges, the procedures for contesting them, and the importance and separate nature of section 274C proceedings from deportation and removal proceedings. The Plaintiffs retain the right to challenge the adequacy of any new waiver forms or procedures initiated by the INS in relation to individuals served with the revised section 274C NIF form.
- (D) Individuals charged under section 274C will be able to note their request for a section 274C hearing on the revised section 274C NIF form and give it to a designated INS processing officer, rather than having to mail the request to a designated address.

### **III. CLASS MEMBERS WHO WERE NOT ISSUED SECTION 274C FINAL ORDERS**

The following provisions apply to class members who waived or failed to request a section 274C hearing after being served with the charging and notice forms challenged in this action, but who were not issued section 274C final orders:

- (A) The INS will not issue a section 274C final order against any class member who received the section 274C notice forms challenged in this action, and who waived or failed to request a hearing within sixty (60) days of receipt of the NIF, based on the same conduct alleged in the NIF.
- (B) The INS will not recharge such a class member with the revised NIF form for the same conduct charged in the original NIF.
- (C) The INS will provide plaintiffs' counsel with the names and A-numbers of all class members known to the INS who were not issued section 274C final orders. The INS will also provide plaintiffs' counsel with the last known address contained in each such class member's INS section 274C case file.

### **IV. CLASS MEMBERS WHO WERE ISSUED SECTION 274C FINAL ORDERS**

The following provisions apply to class members who waived or failed to request a section 274C hearing after being served with the charging and notice forms challenged in this action, and who were issued section 274C final orders:

- (A) The INS will vacate all section 274C final orders issued against class members who received the section 274C notice forms challenged in this action and who waived or failed to request a hearing within sixty (60) days of receipt of the NIF. The INS will vacate all such section 274C final orders within 180 days from the date this Agreement becomes effective pursuant to section VI(B)-(E) below. The INS will notify plaintiffs' counsel in writing upon the completion of the vacatur process.
- (B) The INS will provide plaintiffs' counsel with the names and A-numbers of all class members whose section 274C final orders are vacated pursuant to paragraph (A) above. The INS will also provide plaintiffs' counsel with the last known address contained in each such class member's INS section 274C case file.
- (C) The INS will not recharge such class members with the revised NIF form referenced above for the same conduct charged in the original NIF.

- (D) The INS will not charge such class members as being deportable under INA § 237(a)(3)(C) or inadmissible under INA § 212(a)(6)(F) based on the same conduct charged in the original NIF.
- (E) The INS will agree to join a class member whose section 274C final order is vacated pursuant to paragraph (A) above in a joint motion to re-calendar deportation proceedings that were administratively closed by either the Immigration Judge or the Board of Immigration Appeals pending final resolution of the issues involved in this action. The INS will agree to join in such a motion only after the vacatur process set forth in paragraph (A) above has been completed.
- (F) The INS will join a class member whose section 274C final order is vacated pursuant to paragraph (A) above in a joint motion to reopen or remand deportation proceedings only if:
  - (1) The class member's prior deportation order was based, in whole or part, on a section 274C final order vacated pursuant to the terms of this Agreement (regardless of whether the INS specifically charged the class member with being deportable under INA § 237(a)(3)(C) or inadmissible under INA § 212(a)(6)(F), rendering him or her statutorily ineligible for most forms of relief -- e.g., situations where a class member was not charged with being deportable under INA § 237(a)(3)(C) or inadmissible under INA § 212(a)(6)(F), but was nevertheless denied relief from deportation by the Immigration Judge as a matter of discretion on account of the class member's section 274C final order);
  - (2) The class member submits a written request to the INS Office of the District Counsel for the district in which his or her deportation case was completed before an Immigration Judge, asking the INS to join in a jointly filed motion to reopen deportation proceedings;
  - (3) The class member: (a) is seeking to apply for relief from deportation for which he or she is prima facie eligible as a result of the vacatur of his or her section 274C final order, under the law in effect at the time his or her written request is received by the INS; or (b) is no longer deportable as a result of the vacatur of his or her section 274C final order (e.g., where the class member was a permanent resident alien prior to the previously completed deportation proceeding, during which the only sustained ground of deportability was based upon the class member's now-vacated section 274C final order); and

- (4) The class member's written request is received by the INS within two (2) years from the date the vacatur process set forth in paragraph (A) above has been completed (as indicated in the written notification to plaintiffs' counsel). The INS will agree to join in such motions only after the vacatur process set forth in paragraph (A) above has been completed.
- (G) In the event, and at the time, the INS seeks to take enforcement action on a class member's deportation order that is based in part on a section 274C final order vacated pursuant to paragraph (A) above, the INS will provide written notice to the class member of his or her rights and responsibilities under paragraph (F) above. The written notice will also advise the class member of his or her right to counsel at his or her own expense, and will provide the name, address, and telephone number of plaintiffs' counsel.
- (H) After providing such written notice, the INS will refrain from taking enforcement action on a class member's deportation order for thirty (30) days from the date on the written notice. This will provide the class member time to submit a written request to the INS, pursuant to the terms and conditions of paragraph (F) above, asking the INS to join in a jointly filed motion to reopen deportation proceedings. If the INS does not receive a class member's written request by the end of the thirty-day period, the INS may proceed to take enforcement action on the deportation order, but only if the deportation order contains at least one ground of deportability that is unrelated to the class member's vacated section 274C final order.
- (I) The INS will cease providing the written notice referenced in paragraph (G) above after two (2) years have passed from the date the vacatur process set forth in paragraph (A) above has been completed (as indicated in the written notification to plaintiffs' counsel).
- (J) If the INS agrees to join in a joint motion to reopen or remand deportation proceedings, the INS will continue to refrain from taking enforcement action on the class member's deportation order while the jointly filed motion to reopen is pending before the Immigration Judge or the Board of Immigration Appeals.

- (K) The INS may decline to join in a joint motion to reopen or remand deportation proceedings if the INS determines that the class member's written request fails to comply with the requirements set forth in paragraph (F) above. For example, if the INS determines that a class member is seeking to apply for relief from deportation for which he or she is statutorily ineligible, the INS may decline to join in a joint motion to reopen or remand deportation proceedings. If the INS declines to join in a joint motion to reopen or remand deportation proceedings, the INS will provide the class member with written notification of its decision. The written notification will be mailed to the class member's last known address, as provided by the class member. Such written notification will set forth the class member's rights and responsibilities under this paragraph as follows:
- (1) The class member will have sixty (60) days from the date on the INS written notification to file a motion with the Court seeking review of the INS determination that his or her written request does not comply with the requirements set forth in paragraph (F) above;
  - (2) In any proceeding brought before the Court under this subparagraph, the burden of proof shall be on the class member to establish by clear and convincing evidence that he or she complied with all requirements of paragraph (F) above; and
  - (3) Pursuant to section VI(D) below, the Court's decision in any proceeding brought under this paragraph shall be limited to a determination as to whether the class member has established by clear and convincing evidence that he or she complied with all requirements of paragraph (F) above.
- (L) The INS will refrain from taking enforcement action on a class member's deportation order during the 60-day period referenced in paragraph (K) above. The INS will also refrain from taking action on the class member's deportation order while a class member's motion requesting review of the INS determination not to join in a jointly filed motion to reopen or remand deportation proceedings is pending before the Court. If a class member has not filed his or her motion with the Court by the end of the 60-day period, or if the Court denies the class member's motion and the Court's denial becomes final with all appellate rights having been exhausted, the INS may proceed to take enforcement action on the class member's deportation order, but only if the deportation order contains at least one ground of deportability that is unrelated to the class member's vacated section 274C final order.

- (M) The INS will mount a public information campaign designed to afford notice to class members with prior deportation orders based, in whole or part, on section 274C final orders that are vacated pursuant to this Agreement, of their rights and obligations under this Agreement. The INS will initiate its public information campaign within 30 days from the date the vacatur process set forth in paragraph (A) above has been completed (as indicated in the written notification to plaintiffs' counsel). The public information campaign will be limited to:
- (1) Placement of an Advisory Statement describing the rights and obligations of class members under this Agreement on the INS Internet web site;
  - (2) Distribution of the Advisory Statement referenced in subparagraph (1) above to the Community Relations Office located within each INS District Office;
  - (3) Distribution of the Advisory Statement referenced in subparagraph (1) above to all news organizations in the United States listed on the INS media distribution list;
  - (4) Distribution of the Advisory Statement referenced in subparagraph (1) above to the United States Department of State for distribution to foreign news organizations via United States embassies and consulates located in Mexico, Central America, and South America;
  - (5) Distribution of the Advisory Statement referenced in subparagraph (1) above to all immigration assistance providers listed on the Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review pursuant to 8 C.F.R. § 292;
  - (6) Distribution of the Advisory Statement referenced in subparagraph (1) above to appropriate international organizations and community outreach networks; and
  - (7) Publication of the Advisory Statement referenced in subparagraph (1) above in the Federal Register.



- (N) If the INS agrees to join a class member who is physically outside the United States in a joint motion to reopen or remand deportation proceedings (pursuant to the terms and conditions of paragraph (F) above), the INS will parole or make alternative arrangements to allow the class member to return to the United States for the limited purpose of filing a joint motion to reopen or remand deportation proceedings (pursuant to 8 C.F.R. § 3.2 or 3.23), and for the limited purpose of attending any evidentiary hearings held in relation to the joint motion to reopen or remand deportation proceedings, or reopened deportation proceedings. The government of the United States, however, will not be required to pay for any travel or living expenses for any such class member. Furthermore, such class member must provide to the INS (and United States consular officials abroad, when appropriate), prior to returning to the United States, clear and convincing evidence that he or she possesses the means to depart the United States upon the completion of the evidentiary hearing. Such evidence shall include presentation by the class member of paid round-trip travel arrangements, as well as an unexpired passport or other travel documentation sufficient to ensure lawful return to the country from which the class member is departing. The INS (and United States consular officials abroad, when appropriate) shall have an opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before parole status is granted or alternative arrangements are made. The INS retains its full authority under the INA to detain any class member who returns to the United States pursuant to this paragraph during the period of time the class member is in the United States.

- (O) If the INS declines to join a class member who is physically outside the United States in a joint motion to reopen or remand deportation proceedings (pursuant to the terms and conditions of paragraph (K) above), the INS will parole or make alternative arrangements to allow such a class member to return to the United States for the limited purpose of attending any evidentiary hearings held in relation to proceedings before the Court brought under paragraph (K) above (relating to a determination by the INS not to join a class member's motion to reopen deportation proceedings). The government of the United States, however, will not be required to pay for any travel or living expenses for any such class member. Furthermore, such class member must provide to the INS (and United States consular officials abroad, when appropriate), prior to returning to the United States, clear and convincing evidence that he or she possesses the means to depart the United States upon the completion of the evidentiary hearing. Such evidence shall include presentation by the class member of paid round-trip travel arrangements, as well as an unexpired passport or other travel documentation sufficient to ensure lawful return to the country from which the class member is departing. The INS (and United States consular officials abroad, when appropriate) shall have an opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before parole status is granted or alternative arrangements are made. The INS retains its full authority under the INA to detain any class member who returns to the United States pursuant to this paragraph during the period of time the class member is in the United States.
- (P) The INS will provide plaintiffs' counsel with quarterly status reports on the number of written requests submitted by class members to the INS pursuant to paragraph (F) above. Such quarterly status reports will also indicate the number of cases in which the INS agrees to grant a class member's written request to join in a joint motion to reopen or remand deportation proceedings, and the number of cases in which the INS declines to grant such a request. The first quarterly status report will be provided to plaintiffs' counsel approximately 120 days from the date the vacatur process set forth in paragraph (A) above has been completed (as indicated in the written notification to plaintiffs' counsel).

**V. REFUNDS OF PREVIOUSLY PAID SECTION 274C CIVIL MONEY PENALTY FINE AMOUNTS**

The following provisions apply to class members who previously paid to the INS the section 274C civil money penalty fine amount charged on their NIF (to be vacated pursuant to the terms of this Agreement), regardless of whether they were ever issued a section 274C final order (some class members who were not issued section 274C final orders nevertheless paid the INS the section 274C civil money penalty fine amount charged on their NIF):

- (A) Any class member who previously paid to the INS the section 274C civil money penalty amount charged on his or her NIF shall be entitled to a refund of the amount paid (principal only, not to include compounding interest) only if:
  - (1) The class member submits a written request to the INS Debt Management Center in which he or she clearly establishes by documentary evidence that the section 274C civil money penalty amount charged on his or her NIF was previously paid; and
  - (2) The class member's written request is received by the INS Debt Management Center within two (2) years from the date the vacatur process set forth in paragraph (A) above has been completed (as indicated in the written notification to plaintiffs' counsel). The INS will process refund requests only after the vacatur process set forth in paragraph (A) above has been completed.
- (B) If the INS determines that a class member's refund request is in compliance with the requirements set forth in paragraph (A) above, the INS will pay the refund to the class member within 90 days from the date the INS receives the refund request.
- (C) As part of the INS public information campaign referenced at section IV(M) above, the INS will afford notice to class members of their right to request a refund of any previously paid section 274C civil money penalty amounts pursuant to the terms of paragraph (A) above .
- (D) All parties agree that any section 274C civil money penalty fine amounts previously received by the INS from class members that are not claimed by the end of the two-year period referenced in subparagraph (A)(2) above shall be deposited to the "Immigration Enforcement Account" referenced at INA § 280(b), and the right of class members to claim such section 274C civil money penalty fine amounts shall be permanently extinguished.

## **VI. GENERAL PROVISIONS**

- (A) The INS will pay plaintiffs attorney's fees of \$622,340.00, plus \$44,082.00 in costs, as specified in 28 U.S.C. §§ 1920, 2412, and 2671, and 5 U.S.C. § 504, within thirty (30) days from the date this Agreement becomes effective pursuant to paragraphs (C)-(F) below.
- (B) Upon final approval of this Agreement, the parties will jointly move the Court to enter an order dismissing with prejudice all issues, claims, and causes of action arising from plaintiffs' Complaint. This Agreement will not become effective until the Court signs such an order.
- (C) Upon final approval of this Agreement, the parties will jointly move the Court to enter an order vacating its Order and Permanent Injunction filed on October 2, 1996. This Agreement will not become effective until the Court signs such an order.
- (D) Upon final approval of this Agreement, the parties will jointly move the Court to enter an order by which the Court shall retain jurisdiction, for a two-year period only, to entertain motions brought by class members pursuant to section IV(K) above. The two-year jurisdictional period will begin on the date the vacatur process set forth in section IV(A) above has been completed (as indicated in the written notification to plaintiffs' counsel). The Court shall retain jurisdiction beyond the two-year period, however, to resolve any motions timely filed pursuant to section IV(K) above, including appeals (including any case where a class member's written request asking the INS to join in a jointly filed motion to reopen or remand deportation proceedings is timely filed pursuant to section IV(F)(4) above, but where the INS does not provide the class member with written notification of its decision prior to expiration of the Court's two-year jurisdictional period). The order shall limit the Court's decision in any such proceeding to a determination as to whether the class member has established by clear and convincing evidence that he or she complied with all requirements of section IV(F) above. This Agreement will not become effective until the Court signs such an order.

(E) Upon final approval of this Agreement, the parties will jointly move the Court to enter an order by which the Court shall retain jurisdiction through this Agreement, for a two-year period only, over a claim by any party hereto that any other party has expressly repudiated or committed a substantial breach of any terms of this Agreement (which may include a violation of the Agreement as to an individual class member). The two-year jurisdictional period will end two years from the date the vacatur process set forth in section IV(A) above has been completed (as indicated in the written notification to plaintiffs' counsel). The Court shall retain jurisdiction beyond the two-year period, however, to resolve any motions timely filed pursuant to this paragraph, including appeals. In exercising such retained jurisdiction, the Court shall not act on any matter until the complaining party has initiated the dispute resolution mechanism under paragraph (F) below, the time for response has expired, and the negotiations have proved fruitless; nor shall the Court modify or expand in any way the undertakings of the parties hereunder without the consent of all parties. This Agreement will not become effective until the Court signs such an order.

(F) Dispute Resolution. A significant purpose of this Agreement is to eliminate or reduce the need for further complex litigation in Court. In order to effectuate this purpose the parties agree to the following dispute resolution mechanism:

- (1) Upon learning of any fact or facts that constitute the basis for asserting that a party has expressly repudiated or committed a substantial breach of any terms of this Agreement, the aggrieved party shall notify the other party hereto of that fact or facts and request a report on what remedial action has been taken with respect to such alleged facts prior to invoking the enforcement provisions of this Agreement.
- (2) Within thirty (30) days after receipt of such notice, the other party shall notify the first party of the results of its investigation of the facts and any remedial action it has taken or intends to take in connection therewith.
- (3) Thereafter the parties shall negotiate in good faith in an effort to resolve any disputes remaining after the undertaking set forth in subparagraphs (1) and (2) above have been completed.

- (4) All notices required under the provisions for dispute resolution shall be served upon the respective parties as follows:

Plaintiffs: Linton Joaquin  
National Immigration Law Center  
3435 Wilshire Blvd. #2850  
Los Angeles, CA 90010

Defendants: Shelley Goad  
Office of Immigration Litigation  
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