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28 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

29 LUIS JAVIER PEREZ-OLANO,  
30 et al.,

31 Plaintiffs,

32 v.

33 ERIC H. HOLDER, JR., United States,  
34 Attorney General, et al.,

35 Defendants.

) Case No. CV05-03604 (DDP)  
) Honorable Dean D. Pregerson  
)  
) Date: October 4, 2010  
) Time: 10:00 a.m.  
) Courtroom: 3, 2<sup>nd</sup> Floor Spring Street  
)  
)  
) NOTICE OF MOTION AND  
) JOINT MOTION FOR APPROVAL  
) OF SETTLEMENT AGREEMENT  
) AND NOTICE TO CLASS, AND  
) MEMORANDUM IN SUPPORT  
)

1 **PLEASE TAKE NOTICE** that on **October 4, 2010, at 10:00 a.m.**, or as soon  
2 thereafter as the parties may be heard, Plaintiffs Luis Javier Perez-Olano, Casa  
3 Libre Youth Shelter, Freddy Garrido-Martinez, Manuel Gomez, Yan Jun Li, Luis  
4 Miguel Morales, Michael Yuban Obando, Maejean Robinson, Lucia Urey, on  
5 behalf of themselves, the Class and all Class Members (collectively, the  
6 “Plaintiffs”); and Defendants Eric H. Holder, Jr., United States Attorney General,  
7 Janet Napolitano, Secretary of Homeland Security; and Office of Refugee  
8 Resettlement, (collectively, the “Defendants”) will and do hereby jointly move the  
9 Court pursuant to Federal Rule of Civil Procedure 23, to approve the class-wide  
10 settlement of this action.  
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14

15 The parties respectfully request that the Court:

- 16 (a) Set a schedule for the Fairness Hearing and other appropriate dates;  
17  
18 (b) Approve the form and method of notifying the class;  
19  
20 (c) After the Fairness Hearing, grant approval of the Settlement Agreement  
21 (attached hereto as Exhibit 1); and  
22 (d) After granting final approval of the Settlement Agreement, dismiss this action  
23 and vacate and dissolve the permanent injunction entered by the Court on January  
24 8, 2008. *Perez-Olano v. Gonzales*, 248 F.D.R. 248 (C.D. Cal. 2008).  
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1 The hearing will take place before the Honorable Dean D. Pregerson,  
2 Courtroom 3, Second Floor, United States District Court for the Central District of  
3 California, 312 North Spring Street, Los Angeles, California 90012.  
4

5 This motion is based on the Memorandum of Points and Authorities and the  
6 lodged Settlement Agreement attached hereto; all pleadings, papers and files in this  
7 action; and such oral argument as may be presented at the hearing on this motion.  
8

9 This motion is made following the conference of counsel pursuant to L.R.  
10 7-3 which took place on **August 30, 2010**.  
11

12  
13 Dated: August 31, 2010

14 Respectfully submitted,

15 Attorneys for Defendants:

16 TONY WEST  
17 United States Department of Justice  
Assistant Attorney General

18 /s/ David J. Kline  
19 DAVID J. KLINE  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3  
4 Plaintiffs and Defendants jointly submit this Memorandum in Support of the  
5 Joint Motion for Approval of Class Action Settlement and Approval of Notice to  
6 Class. For the reasons articulated in the motion and this supporting memorandum,  
7 the parties respectfully request that the Court approve the class notice and  
8 procedures, and schedule a date for the Fairness Hearing. The parties further  
9 request final approval of the Settlement Agreement after the hearing, followed by  
10 dissolution of the injunction entered by the Court on January 8, 2008. *Perez-Olano*  
11 *v. Gonzalez*, 248 F.R.D. 248 (C.D. Cal. 2008).  
12  
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14

15 At issue in this case are certain policies, practices, and regulations regarding  
16 Form I-360 petitions for status as Special Immigrant Juveniles (“SIJ status”) and  
17 adjustment of status applications based upon a petition for Special Immigrant  
18 Juvenile status (“SIJ-based adjustment of status”) pursuant to 8 U.S.C.  
19 §§ 1101(a)(27)(J)<sup>1</sup> and 1255. Plaintiffs’ claims and the Court’s partial disposition  
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22  
23 <sup>1</sup> The SIJ program derives primarily from 8 U.S.C. § 1101(a)(27)(J), which includes the  
following persons in the definition of a “special immigrant”:

24 (J) an immigrant who is present in the United States –

25 (i) who has been declared dependent on a juvenile court located in the United States or  
26 whom such a court has legally committed to, or placed under the custody of, an agency or  
27 department of a State, or an individual or entity appointed by a State or juvenile court  
located in the United States, and whose reunification with one or both of the immigrant’s



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## II. STATEMENT OF FACTS

On January 8, 2008, the Court issued an order granting in part, and denying in part, Plaintiffs’ motion for class certification, and granting in part, and denying in part, Plaintiffs’ motion for partial summary judgment. *Perez-Olano*, 248 F.R.D. at 271. The Court set a trial for February 26, 2008, on the two remaining issues.

On January 22, 2008, the parties jointly stipulated to continue the trial until April 28, 2008. (*See* Dkt. 124).

Defendants filed a notice of appeal on February 5, 2008 (Case No. 08-55195). On February 19, 2008, Plaintiffs filed a notice of cross-appeal. On March 11, 2008, the Court continued trial until after the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) disposed of Defendants’ motion to dismiss Plaintiffs’ cross-appeal for lack of jurisdiction. (*See* Dkt. 154). On August 11, 2010, the Ninth Circuit dismissed the appeal and cross-appeal without prejudice to reinstatement pending this Court’s determination of whether to approve the Settlement Agreement.

### A. Summary Of The Proposed Settlement Agreement

On May 4, 2010, the parties reached a Settlement Agreement that will dispose of this action. *See* Settlement (Ex. 1). The beneficiaries of the Settlement Agreement are “all aliens, including, but not limited to, SIJ applicants, who, on or

1 after May 13, 2005, apply or applied for SIJ status or SIJ-based adjustment of  
2 status based upon their alleged SIJ eligibility.” See Settlement (Ex. 1, ¶ 3). The  
3 parties have excluded no unnamed class-member of the certified subclasses from  
4 coverage under the Settlement Agreement. As explained below, the Settlement  
5 Agreement provides relief not only to the certified “specific consent” and “age-  
6 out” subclasses, but also youth in removal proceedings who were unable to seek  
7 adjudication of their SIJ-based adjustment of status applications before United  
8 States Citizenship and Immigration Services (“USCIS”) or who had a final  
9 removal order that was more than 90 days-old, and, therefore, were unable to seek  
10 SIJ-based adjustment of status, a sub-class the Court declined to certify. *Perez-  
11 Olano v. Gonzales, supra*, 248 F.R.D. at 263.

16 **1. “Specific consent” sub-class.**

17  
18 In its order of January 8, 2008, the Court issued class-wide relief barring  
19 Defendants from requiring that youth in federal custody obtain “specific consent”  
20 prior to invoking the jurisdiction of state juvenile courts so long as the state court  
21 does not determine a youth’s custody status or placement. 248 F.R.D. at 264-65.  
22 The Settlement Agreement continues this protection, providing that Defendants  
23 will not require specific consent except when a juvenile is in the custody of HHS  
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1 and the juvenile seeks a state court order determining or altering the juvenile's  
2 custody status or placement. *See* Settlement (Ex. 1, ¶ 17).  
3

4 In cases where specific consent is required, the Settlement Agreement sets  
5 standards and procedures for the disposition of specific consent requests. *See*  
6 Settlement (Ex. 1, ¶¶ 18 (requiring acknowledgment of specific consent request  
7 within two business days); 20 (providing for expeditious adjudication of specific  
8 consent requests and disclosure of evidentiary basis for decision); and 21-22  
9 (providing for administrative review of denials of specific consent)). The  
10 Settlement Agreement's protections thus go beyond those of the injunction, which  
11 does not address procedures for granting specific consent in those cases where it  
12 may be required.  
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15

16 Unlike the current injunction, however, the benefits the Settlement  
17 Agreement affords class members are not permanent, but sunset six years after the  
18 agreement becomes effective. *See* Settlement (Ex. 1, ¶ 41). However, several  
19 factors ameliorate the potential impact of this concession on class members.  
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22 First, section 235(d) of the William Wilberforce Trafficking Victims Protection  
23 Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (December 23,  
24 2008) ("TVPRA"), transferred the authority to issue specific consent from U.S.  
25 Immigration and Customs Enforcement ("ICE") to the Department of Health and  
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1 Human Services (“HHS”).<sup>2</sup> Thus, even after the Settlement Agreement sunsets,  
2 determinations of whether to issue specific consent will be made by HHS, rather  
3 than by ICE. Plaintiffs believe this difference is important because ICE’s mission  
4 is to enforce the federal immigration laws, whereas HHS is tasked with the care  
5 and custody of unaccompanied juveniles.  
6  
7

8 Second, Defendants have complied with the Court’s injunction for more than  
9 two years, and they will continue the same essential policy and practice for another  
10 six years under the Settlement Agreement. Though there is no guarantee  
11 Defendants will not resume enjoined practices when the Settlement Agreement  
12 sunsets, Plaintiffs’ counsel believe that a government agency should not easily  
13 jettison an approach that will by then have become familiar.  
14  
15

16 Third, even if after six years HHS were to resurrect ICE’s approach – that  
17 specific consent is required whenever a youth in federal custody invokes a state  
18 juvenile court’s jurisdiction – nothing would prevent aggrieved youth from  
19 bringing a new lawsuit. As a practical matter, class counsel thinks it unlikely  
20 Defendants would return to their old practice upon the sunset of the Settlement  
21 Agreement.  
22  
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25 <sup>2</sup> On December 23, 2008, the TVPRA was signed into law. Section 235(d) of the TVPRA  
26 transferred the authority over specific consent determinations from DHS to HHS and extended the  
27 eligibility for SIJ status to all aliens who were under 21 years of age at the time they filed a completed SIJ  
petition with USCIS.

1 In all events, more than counter-balancing this potential detriment to  
2 sub-class members are the additional benefits the Settlement Agreement provides  
3 youth who continue to need specific consent. There is also the possibility the  
4 January 8, 2008 injunction could be overturned on appeal, leaving all specific  
5 consent sub-class members bereft of any protection at all. On balance, then,  
6 specific consent sub-class members are better off under the Settlement Agreement  
7 than they would be without it.  
8  
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10  
11 **2. “Age-out” sub-class.**

12 In its January 8, 2008 order, the Court rejected Plaintiffs’ facial challenge to  
13 Defendants’ age-out regulations, but reserved for trial Plaintiffs’ claim that USCIS  
14 abused its discretion in applying the age-out regulations to class members whose  
15 SIJ applications USCIS unreasonably delayed adjudicating. *Perez-Olano v.*  
16 *Gonzales*, 248 F.R.D. at 269-70. On this score the Settlement Agreement affords  
17 sub-class members relief without requiring them to prove unreasonable delay in the  
18 adjudication of their individual SIJ applications. Under the Settlement Agreement  
19 USCIS will not deny or revoke a class member’s SIJ status petition or SIJ-based  
20 adjustment of status application on account of age or dependency status if, at the  
21 time the class member files the petition or application, he or she is under 21 years  
22 of age or is the subject of a valid dependency order even if that dependency order  
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1 is thereafter terminated on the basis of age. Additionally, USCIS will not deny or  
2 revoke a class member's SIJ status petition or SIJ-based adjustment of status  
3 application on account of ineligibility for long-term foster care. *See* Settlement  
4 (Ex. 1, ¶¶ 23-24). The Settlement Agreement also provides that juveniles may file  
5 Form I-765 applications for employment authorization together with their  
6 applications for SIJ-based adjustment of status. *See* Settlement (Ex. 1, ¶ 26).  
7  
8

9           In addition to this prospective relief, the Settlement Agreement provides that  
10 USCIS will re-adjudicate SIJ status petitions and/or SIJ-based adjustment of status  
11 applications filed on or after May 13, 2005, that USCIS denied for reasons  
12 inconsistent with the Settlement Agreement. *See* Settlement (Ex. 1, ¶ 28). USCIS  
13 will also re-adjudicate, without fee, SIJ-based adjustment of status applications for  
14 three named plaintiffs. *See* Settlement (Ex. 1, ¶ 27). Therefore, under the  
15 Settlement Agreement, such youth may seek a re-adjudication of their eligibility  
16 for SIJ benefits under the same standards the Settlement Agreement prescribes  
17 prospectively: so long as they filed their SIJ applications while under 21 or while  
18 still dependent on a juvenile court, applicants who aged-out of SIJ eligibility in the  
19 past may receive the same relief as will future applicants.  
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1           **3. The remaining provisions of the Settlement Agreement.**

2           In contrast to the specific consent and age-out subclasses, the Court declined  
3  
4 to certify the proposed “removal” sub-class: youth in removal proceedings who  
5 were unable to seek adjudication of their SIJ-based adjustment of status  
6 applications before USCIS and who are subject to final orders of removal that are  
7 more than 90 days old. *Perez-Olano v. Gonzales, supra*, 248 F.R.D. at 262-63.  
8

9           Substantively, the Court also upheld the facial validity of Defendants’  
10 regulations conferring exclusive jurisdiction upon immigration judges to adjudicate  
11 SIJ-based adjustment applications of youth placed in removal proceedings, as well  
12 as regulations generally barring youth from moving to re-open their removal  
13 hearings more than 90 days after they have been ordered removed. *Id.* at 270-71.  
14  
15 The Court ruled, however, “Plaintiffs may still raise a claim of abuse of discretion  
16 in application of the removal regulations.” *Id.* at 271.  
17

18           Here, the Settlement Agreement affords relief to the proposed removal  
19 sub-class without requiring aggrieved youth to prove Defendants abused their  
20 discretion in the application of the jurisdictional regulations to their individual  
21 cases. Pursuant to ¶ 29 of the Settlement Agreement, ICE will join motions to  
22 reopen removal proceedings when the juvenile (i) requests such joinder within 60  
23 days of being notified by USCIS that it has granted him or her SIJ status; and (ii) is  
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1 not inadmissible under INA § 212, or removable under INA § 237, on grounds that  
2 disqualify him or her from adjustment of status, or, if inadmissible, such grounds  
3 of inadmissibility have been waived or are waivable. *See* Settlement (Ex. 1, ¶ 29).  
4  
5 The Settlement thus confers substantial benefits upon members of the uncertified  
6 removal sub-class.  
7

8         Additionally, the Settlement Agreement provides that ICE will join in a  
9 motion to reopen the removal proceedings against Plaintiff Freddy Garrido  
10 Martinez, but that such joinder shall be without prejudice to ICE's right to contest  
11 any claim advanced by Garrido Martinez or his eligibility for SIJ-based adjustment  
12 of status. *See* Settlement (Ex. 1, ¶ 30). In the event that an immigration judge  
13 terminates the proceedings against Garrido Martinez, USCIS will re-adjudicate  
14 Garrido Martinez's adjustment of status application. *See* Settlement (Ex. 1, ¶ 31).  
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17

18         The Settlement Agreement becomes effective on the date that the last of the  
19 following conditions has been satisfied: (1) approval by the district court of this  
20 agreement; (2) entry by the district court of an order dissolving the nationwide  
21 permanent injunction and dismissing the action with prejudice; and (3) withdrawal  
22 of the parties' appeals, which are pending before the Ninth Circuit. The Settlement  
23 Agreement terminates six years after the effective date. *See* Settlement (Ex. 1,  
24 ¶ 36). The Settlement Agreement creates a dispute resolution structure and  
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1 provides for notice to class members and to the general public. *See* Settlement (Ex.  
2 1, ¶¶ 42-43). The Settlement Agreement does not include any agreement regarding  
3 attorneys fees. Instead, the proposed Settlement Agreement states that Plaintiffs  
4 may attempt to negotiate, request, seek, or solicit attorney fees pursuant to the  
5 Equal Access to Justice Act, 28 U.S.C. § 2412(d). Plaintiffs' application for fees  
6 must be filed no later than 30 days after the district court approves the Settlement  
7 Agreement. Defendants have the right to challenge Plaintiffs' EAJA fee request in  
8 whole, or in part. *See* Settlement (Ex. 1, ¶ 49).

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11  
12 Pursuant to Rule 23(e)(3), the parties hereby notify the Court that, other than  
13 as stated in the Settlement Agreement, there are no agreements requiring disclosure  
14 that were "made in connection with the propos[ed settlement]." *See* Fed. R. Civ. P.  
15 23(e)(3).  
16

17  
18 **B. Proposed Notice To The Class**

19 Notice of the proposed Settlement Agreement will be prominently displayed  
20 on the Defendants' public websites and disseminated through other forms of public  
21 dissemination that the Defendants independently deem appropriate. *See* Settlement  
22 (Ex. 1 ¶¶ 44-46); Proposed Notice (Ex. 2). The Notice contains a summary of the  
23 terms, a description of who qualifies as a Class Member, instructions on how to  
24 obtain further information about the Settlement Agreement, and procedures for  
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1 objecting and appearing at the Fairness Hearing. *See* Proposed Notice (Ex. 4).  
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3

4 Class Members will be notified of the Settlement Agreement both before and  
5 after final approval. These notices are appropriate under Rule 23(e)(1) and will  
6 enable Class Members to obtain the relief they are entitled to under the Settlement  
7 Agreement.  
8

### 9 III. ARGUMENT

#### 10 A. Standard For Approval Of Class Action Settlements

11 Settlements and voluntary conciliation are “the preferred means of dispute  
12 resolution.” *In re Syncor Erisa Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008)  
13 (additional citation omitted). The public policy favoring settlement agreements is  
14 particularly strong in complex class action litigation. *Id.* The Federal Rules of  
15 Civil Procedure and the Local Rules of the United States District Court, Central  
16 District of California, also encourage settlement of cases. *Id.*, *citing* Fed. R. Civ. P.  
17 16(a)(5) (one of the five purposes of a pretrial conference is to facilitate  
18 settlement); L.R. 16-2.9 (requiring parties to exhaust all possibilities of settlement);  
19 L.R. 16-15 to 15.9 (setting forth policies and procedures for settlement including  
20 encouraging disposition of civil litigation by settlement by any reasonable means).  
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26 Rule 23(e) of the Federal Rules of Civil Procedure provides:  
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1 A class action shall not be dismissed or compromised without the  
2 approval of the court, and notice of the proposed dismissal or  
3 compromise shall be given to all members of the class in such manner  
4 as the court directs.

5 The purpose of Rule 23(e) is to protect “unnamed class members from unjust or  
6 unfair settlements affecting their rights when the representatives... are able to  
7 secure satisfaction of the individual claims by a compromise.” *Amchem Prods.,*  
8 *Inc. v. Windsor*, 521 U.S. 591, 623 (1997) (quoting 7B Wright, Miller, & Kane,  
9 FEDERAL PRACTICE AND PROCEDURE § 1797, at 340-341).

10 Under Fed. R. Civ. P. 23(e), the Court must evaluate whether the proposed  
11 settlement is fundamentally fair, adequate, and reasonable. *Hanlon v. Chrysler*  
12 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citations omitted). One requirement is  
13 that adequate notice of the settlement be provided to the class members. *Id.* at  
14 1025; Fed. R. Civ. P. 23(e)(1).

15 It is the settlement taken as a whole, rather than the individual component  
16 parts, that courts examine for overall fairness. *Officers for Justice v. Civil Serv.*  
17 *Comm’n of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). A Rule 23(e)  
18 inquiry

19 focuses primarily upon whether the particular aspects of the decree  
20 that directly lend themselves to pursuit of self-interest by class  
21 counsel and certain members of the class—namely, attorneys’ fees and  
22 the distribution of any relief, particularly monetary relief, among class  
23

1 members-strictly comport with substantive and procedural standards  
2 designed to protect the interests of class members.

3 *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003).

4  
5 Courts also weigh the following factors in determining whether to approve a  
6 class settlement:

7 [T]he strength of the plaintiffs' case; the risk, expense, complexity,  
8 and likely duration of further litigation; the risk of maintaining class  
9 action status throughout the trial; the amount offered in settlement; the  
10 extent of discovery completed and the stage of the proceedings; the  
11 experience and views of counsel; the presence of a governmental  
12 participant; and the reaction of the class members to the proposed  
settlement.

13 *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003), overruled in part on other  
14 grounds, *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 617 (9th Cir. Cal. 2010).<sup>3</sup>

15  
16 The weight given any particular factor depends upon the "nature of the  
17 claims, the types of relief sought, and the unique facts and circumstances presented  
18 by the individual case." *Officers for Justice, supra*, 688 F.2d at 625. Judged  
19

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20  
21 <sup>3</sup> Even if there is some doubt about a settlement's fairness, there is a "strong judicial policy that  
22 favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v.*  
23 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The decision to approve or reject a settlement is  
24 committed to the sound discretion of the trial court because it is "exposed to the litigants, and their  
25 strategies, positions and proof." *Id.* at 626 (internal quotation omitted). Appellate "review of the district  
26 court's decision to approve a class action settlement is extremely limited." *Hanlon*, 150 F.3d at 1026.  
27 "To survive appellate review, the district court must show it has explored comprehensively all factors,"  
*id.*, but a trial court is not required to "reach any ultimate conclusions on the contested issues of fact and  
law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and  
avoidance of wasteful and expensive litigation that induce consensual settlements," *Officers for Justice,*  
*supra*, 688 F.2d at 625.

1 against these standards, the Settlement Agreement herein is wholly fair to class  
2 members and merits this Court's approval.  
3

4 **B. The Settlement Agreement Meets All Standards For Approval.**

5 **1. The strength of Plaintiffs' case.**

6  
7 The Court has previously assessed the strength of Plaintiffs' various claims  
8 on behalf of the three sub-classes seeking relief in this action. *See Perez-Olano v.*  
9 *Gonzalez, supra*, 248 F.R.D. at 248. As explained above, the Settlement  
10 Agreement confers critical benefits on youth who have as yet received no formal  
11 relief ("age-out" and "removal" sub-classes), and adds forms of relief to those  
12 youth in federal custody (the "specific consent" subclass).  
13  
14

15 Plaintiffs have accordingly not compromised overwhelmingly strong class  
16 claims in exchange for individual relief. To the contrary, all parties have assessed  
17 the uncertainties inherent in continued litigation and reasonably determined that the  
18 terms of the Settlement are preferable.  
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1           **2. The risk, expense, complexity, and likely duration of further**  
2           **litigation.**

3           This case is now five years old. Even were the parties to pursue their  
4 pending appeals to decision, trial on plaintiffs' more fact-intensive claims would be  
5 required, with the parameters of trial uncertain. *See* Order Granting Continuance  
6 of Trial, March 11, 2008 (Dkt. 154) ("The trial issues in this case are dependent on  
7 the outcome of the Ninth Circuit's review of this Court's January 8, 2008 Order.").  
8  
9 As the parties recognize in the Settlement, "a trial in this case would be complex,  
10 lengthy and costly to all parties concerned, and the decision of the District Court  
11 may be subject to appeal by the losing Party with the final outcome uncertain . . . ."  
12  
13 *See* Settlement (Ex. 1, ¶ 2).

14  
15           The parties' assessment is reasonable. The Settlement Agreement reduces  
16 further delay, removes uncertainty, obviates the need for trial, and affords class  
17 members specific and meaningful relief.  
18

19  
20           **3. The amount offered in settlement.**

21           Since its inception, this action has sought only equitable relief; nowhere do  
22 the named plaintiffs realize any monetary gain from the Settlement. There is  
23 accordingly no potential that the named plaintiffs have subordinated the interests of  
24 absent class members for personal pecuniary advantage. Likewise, there is no  
25  
26  
27  
28

1 danger that Plaintiffs colluded with the government Defendants to sacrifice the  
2 interests of Class Members for their own monetary gain.  
3

4 Class members' rights under the Settlement Agreement have also been  
5 negotiated wholly apart from attorneys' fees. The Settlement provides only that  
6 Plaintiffs may attempt to negotiate or win attorneys' fees under the Equal Access  
7 to Justice Act, 28 U.S.C. § 2412 once the Court approves the Settlement, but  
8 stipulates that such fees shall be "independent of the Agreement . . . ." *See*  
9 Settlement (Ex. 1, ¶ 49).  
10  
11

12 In sum, it is clear that neither the class representatives nor class counsel have  
13 sought to profit from the Settlement at the expense of absent class members.  
14

15 **4. The extent of discovery completed and the stage of the**  
16 **proceedings.**

17 The parties have conducted extensive discovery and have thus fully fleshed  
18 out their respective positions, claims and defenses. This action has been  
19 vigorously litigated for five years. There is no possibility that the parties have  
20 precipitously or unknowingly compromised the claims of absent class members.  
21  
22

23 **5. The experience and views of counsel.**

24 Lead class counsel are affiliated with a respected non-profit organization  
25 specializing in federal litigation on behalf of immigrants and refugees. Counsel  
26 have successfully litigated many class actions and individual cases on behalf of  
27  
28

1 immigrants, refugees, and youth. *See, e.g., Reno v. Catholic Social Services*, 509  
2 U.S. 43 (1993); *Reno v. Flores*, 507 U.S. 292 (1993); *Plyler v. Doe*, 457 U.S. 202  
3 (1982); *League of United Latin American Citizens v. Wilson*, 131 F.3d 1297 (9th  
4 Cir. 1997); *Ramon Sepulveda v. INS*, 863 F.2d 1458 (9th Cir. 1988); *Haitian*  
5 *Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982); *Mendez v. INS*, 563 F.2d  
6 956 (9th Cir. 1977); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351 (C.D. Cal.  
7 1982).

8  
9  
10  
11 Plaintiffs' counsel believe the Settlement Agreement to be of great benefit to  
12 abused, abandoned, and neglected youth, and they accordingly urge the Court to  
13 approve it.  
14

#### 15 **6. Presence of a governmental participant.**

16 That multiple federal government agencies participated, under the auspices  
17 of the Ninth Circuit Mediation Program, adds to the integrity of the Settlement  
18 Agreement and the negotiations that led to it.  
19

20 As noted above, this case was vigorously contested by both sides and there  
21 is no suggestion of fraud or collusion in the negotiations. "As a general principle,  
22 'the courts respect the integrity of counsel and presume the absence of fraud or  
23 collusion in negotiating the settlement, unless evidence to the contrary is offered.'" *Hemphill v. San Diego Ass'n of Realtors, Inc.*, 225 F.R.D. 616, 621 (S.D. Cal.  
24  
25  
26  
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1 2005) (citing A. Conte and H. Newberg, *Newberg on Class Actions* § 11.51(4th ed.  
2 2002) at 158-59). The parties engaged in extensive briefing and negotiated – at  
3 arm’s length – a resolution of the action, resulting in the Settlement Agreement.  
4 Because the Settlement Agreement was the result of the fair functioning of the  
5 adversarial process, the parties did not collude to reach the Settlement Agreement.  
6  
7

8 **7. The proposed notice provides absent class members adequate**  
9 **opportunity to react to the Settlement.**

10 The final factor bearing on the fairness of the Settlement Agreement is  
11 absent class members’ reaction to it. Although class members’ views will not be  
12 known until after the proposed notice period closes, class counsel regularly  
13 consulted with leading attorneys and advocates for SIJ-eligible youth during the  
14 negotiations leading up to the Settlement Agreement. *See* Declaration of Carlos  
15 Holguin (Ex. 3). Although these advocates might have improved the Settlement  
16 Agreement in some particular or other, their consensus is that the Settlement  
17 Agreement confers invaluable rights on abused, abandoned, and neglected youth  
18 and is much to be preferred to the uncertainty of further litigation. *Id.*  
19  
20  
21  
22

23 With respect to notice, Rule 23 requires that the members of the class must  
24 be notified of a proposed settlement in a “form and manner that does not  
25 systematically leave an identifiable group without notice.” *Mandujano v. Basic*  
26 *Vegetable Products, Inc.*, 541 F.2d 832, 835 (9th Cir. 1976). The proposed order  
27  
28

1 re: notice lodged herewith specifies the steps the parties must take to publicize the  
2 Settlement. *See* Settlement (Ex. 1, ¶¶ 44, 46); Proposed Notice (Ex. 2).  
3

4 As explained above, the notice describes those whose rights are at stake,  
5 explains the benefits the Settlement Agreement confers, and informs class  
6 members how they may obtain the full text of the Settlement Agreement. The  
7 notice further describes how they may submit objections and how the parties shall  
8 address any such objections. The proposed procedure for giving notice will  
9 adequately inform class members of the Settlement, make any objections part of  
10 the record, and allow the Court to determine whether any objections are so  
11 substantial as to merit an opportunity for the objector to be heard further.  
12  
13  
14

15 **C. The Court Should Approve Parties' Proposed Form and Method of**  
16 **Class Notice**

17 Rule 23(e)(1) requires that the court “direct notice in a reasonable manner to  
18 all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).  
19 Notice is satisfactory if it ‘generally describes the terms of the settlement in  
20 sufficient detail to alert those with adverse viewpoints to investigate and to come  
21 forward and be heard.’” *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th  
22 Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th  
23 Cir. 1980)). Here, the proposed notice procedures involve the posting of the  
24 Notice and the Settlement Agreement on the Defendants’ websites and Defendants  
25  
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28

1 will also disseminate the Notice through other forms of public dissemination that  
2 the Defendants independently deem appropriate.  
3

4 These notification procedures are specifically tailored to ensure that Class  
5 Members will be informed of the Settlement Agreement and their rights to object.  
6 In particular, the parties believe that notice by means of the various websites is  
7 reasonably calculated to inform Class Members of the Settlement Agreement.<sup>4</sup>  
8

9 The contents of the Notice are adequate to inform Class Members of their  
10 rights. The Notice contains a description of the certified sub-classes; a summary of  
11 the litigation, subsequent legislation, and the proposed Settlement Agreement; and  
12 instructions about how to file an objection. The proposed Notice here provides  
13 ample information to enable potential Class Members to determine whether they  
14 qualify for relief, what relief the Settlement Agreement will provide, and how to  
15 file an objection. The Notice is therefore reasonable and satisfies Rule 23(e)'s  
16 requirements.  
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25 <sup>4</sup> Defendants represent that individual Class Members cannot be readily identified to warrant  
26 individual notice by mail, as USCIS does not maintain records in a manner that would enable the  
27 affirmative identification of applicants who would qualify as Class Members. Such notice also is not  
28 required by Rule 23(e) or the U.S. Constitution.

1 **D. The Court Should Vacate the Injunction Contained Within The Order**  
2 **of April 28, 2009.**

3 As part of the Settlement Agreement, the parties agree to (1) jointly move to  
4 dismiss this action, with prejudice; (2) to dissolve the nationwide permanent  
5 injunction entered by the Court; and (3) to withdraw their respective appeals from  
6 the Court's January 8, 2008 order, which are pending before the Ninth Circuit.  
7

8 Accordingly, as part of the final order approving the Settlement Agreement,  
9 both parties request that this Court dissolve the injunction contained within the  
10 Order of January 8, 2008.  
11

12 **IV. CONCLUSION**

13  
14 For the foregoing reasons, the Court should approve the form and method of  
15 the notice to the class, schedule appropriate dates for the Fairness Hearing and  
16 other proceedings necessary to give final approval to the Settlement Agreement.  
17 Following the Fairness Hearing, the Court should enter final judgment and dissolve  
18 the injunction.  
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Dated: August 31, 2010

Attorneys for Defendants:

Respectfully submitted,

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Assistant Attorney General  
Civil Division  
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1 **CERTIFICATE OF SERVICE**

2 Case No. CV05-03604 (DDP)

3  
4 I certify that on this 31st day of August 2010, true and correct copies of the  
5 foregoing **NOTICE OF MOTION AND JOINT MOTION FOR APPROVAL**  
6 **OF CLASS ACTION SETTLEMENT AND APPROVAL OF NOTICE TO**  
7 **CLASS AND MEMORANDUM OF POINTS AND AUTHORITIES IN**  
8 **SUPPORT OF MOTION** was served pursuant to the district court's ECF system  
9  
10 as to the following ECF filers:  
11

12  
13 Carlos R. Holguín  
14 Center for Human Rights & Constitutional Law  
15 256 South Occidental Boulevard  
16 Los Angeles, CA 90057

17 Peter A. Schey  
18 Center for Human Rights & Constitutional Law  
19 256 South Occidental Boulevard  
20 Los Angeles, CA 90057

21 /s/ Melissa S. Leibman  
22 Melissa S. Leibman  
23 Trial Attorney, District Court Section  
24 Office of Immigration Litigation  
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Attorneys for Defendants



1           4.     The parties shall make the full text of the proposed Settlement Agreement  
2 available to class members as described in the Notice of Proposed Settlement of Class  
3 Action.

4           5.     Compliance with the procedures specified in Paragraphs 45-48 of the  
5 Settlement Agreement and the Notice of Proposed Settlement of Class Action satisfies  
6 the notice requirements of Federal Rule of Civil Procedure 23(e).

7           6.     The Court will hold a Final Settlement Hearing (“Fairness Hearing”) on  
8 November 15, 2010, at 10:00 a.m., to determine whether the terms of the Settlement  
9 Agreement are fair, reasonable, and adequate and should be approved by the Court,  
10 and to rule upon such other matters as the Court may deem appropriate.

11          7.     Any Class Member may appear at the Fairness Hearing and show cause  
12 why the Settlement Agreement should not be approved as fair, reasonable, and  
13 adequate; *provided*, however, that no Class Member shall be entitled to contest the  
14 approval of the terms and conditions of the Settlement Agreement, or, if approved, the  
15 judgment thereon, unless he/she first submits written objections in accordance with  
16 the instructions contained in the Notice.

17          8.     Class members shall have a period of 30 days within which to submit  
18 written objections to the proposed settlement. However, any Class Member who  
19 intends to make an appearance at the Fairness Hearing, either in person or through  
20 counsel at that Class Member’s expense, must deliver to Class Counsel and  
21 Defendants’ Counsel and file with the Court, no later than five (5) business days  
22 before the Fairness Hearing, a notice of intention to appear and a statement identifying  
23 any documents the Class Member will seek to introduce or witnesses the Class  
24 Member will seek to call at the Fairness Hearing.

25          9.     Any Class Member who fails to comply with paragraphs 7 and 8 of this  
26 Order shall waive and forfeit any and all rights that Class Member may have to appear  
27 separately or object, or to take any appeal of the orders of judgment in this action, and  
28 shall be bound by all the terms of this Settlement Agreement, and any other orders of

1 the Court, upon final approval of the settlement.

2 10. Within ten days after the close of the objection period, the parties shall  
3 file reports addressing any objections to the proposed settlement, together with a  
4 proposed order approving the settlement. The Court will thereafter direct such further  
5 proceedings as may appear appropriate. In the absence of further proceedings, the  
6 matter shall stand submitted.

7

8

9 **IT IS SO ORDERED.**

10

11 Date:

HON. DEAN D. PREGERSON  
UNITED STATES DISTRICT JUDGE

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