

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HEREDIA MONS, et al.,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, et al.,

Defendants.

Civil Action No. 19-1593 (JEB)

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

Pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e), the parties, by undersigned counsel, jointly move for preliminary approval of a class-action settlement agreement reached by the parties and which is attached hereto as Exhibit 1, Settlement Agreement.

BACKGROUND

Plaintiffs filed the above-captioned lawsuit in May 2019, against certain officials with the United States Department of Homeland Security (“the Department”) and its component, United States Immigration and Customs Enforcement (“ICE”). The Complaint was filed as a Class Action Complaint and sought to enjoin Defendants’ alleged practice within ICE’s New Orleans Field Office of categorically denying parole to asylum-seekers in contravention of Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (hereinafter, “the 2009 Parole Directive”) as violative of the Administrative Procedure Act (“APA”), and also alleging that Defendants violated both the APA and the Due Process Clause of the Fifth Amendment to the Constitution in allegedly failing to provide individualized

determinations in connection with the terms of the 2009 Parole Directive. Defendants deny these allegations.

By order dated September 5, 2019, the Court, among other things, granted Plaintiffs' motion for preliminary injunction and granted Plaintiffs' motion for class certification on a provisional basis for purposes of the preliminary injunction. By order dated January 9, 2020, the Court defined the provisionally certified class as follows: "(1) all arriving asylum seekers; (2) who receive positive credible fear determination; and (3) who are or will be detained by U.S. Immigration and Customs Enforcement after having been denied parole by the New Orleans ICE Field Office, including all those denied parole after September 5, 2019."

Pursuant to the Court's minute order dated October 7, 2019, and until that order was modified by order dated August 22, 2024, Defendants had been filing by the 24th of each month (or the next business day when the 24th was a weekend or holiday), monthly status reports accompanied by an agency declaration attaching spreadsheets of initial parole determination and parole re-determination data (the August 22, 2024 order changed the reporting to a quarterly basis).

In May 2020, Plaintiffs filed a Motion for Issuance to Show Cause, Expedited Discovery, and Appointment of Special Master, alleging that Defendants were not complying with the Court's September 5, 2019, order. Defendants opposed that motion and denied that they had failed to comply with the September 5, 2019, order. By order, dated July 22, 2020, the Court granted Plaintiffs' motion in part and denied it in part. Specifically, the Court granted Plaintiffs' request for limited discovery but denied the motion in all other respects without prejudice, stating that the motion could be renewed following discovery and a potential hearing on Defendants' alleged violations. Plaintiffs thereafter conducted limited discovery, but the parties continued to disagree as to whether further discovery was warranted. On or about March 2021, while those issues

remained outstanding, the parties commenced settlement discussions which they pursued diligently for several years.

Those discussions ultimately resulted in the attached settlement agreement bearing a signature date of September 23, 2024 (the “Agreement”). Pursuant to paragraph 20(a) of the Agreement, the parties are jointly moving for a Preliminary Approval Order that would (a) preliminarily approve the Agreement and find it to be fair, just, reasonable, and adequate; (b) certify the Settlement Class in a manner consistent with the Court’s January 9, 2020 provisional certification order; (c) approve the Class Notice to the Class Members attached as Exhibit A to the Agreement; and (d) set a Fairness Hearing to consider the Final Approval Order and any objections thereto.

I. The Court Should Certify the Settlement Class.

By order dated January 9, 2020, the Court defined the provisionally certified class as follows: “(1) all arriving asylum seekers; (2) who receive positive credible fear determination; and (3) who are or will be detained by U.S. Immigration and Customs Enforcement after having been denied parole by the New Orleans ICE Field Office, including all those denied parole after September 5, 2019.” Pursuant to Rule 23(e), the Court should certify a Settlement Class for purposes of the Settlement Agreement in a manner consistent with that January 9, 2020, order.

II. The Court Should Find That Approval of the Settlement Is Likely and Direct That Notice Be Provided to Class Members Under Rule 23(e).

Rule 23(e) requires court approval of a class-action settlement. This entails a “three-stage process, involving two separate hearings.” *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 189–90 (D.D.C. 2017) (cleaned up). Before the Court may approve a class-action settlement, it “must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to

(i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2), in turn, requires that the settlement be “fair, reasonable, and adequate.” The first stage, then, is for the Court to “make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms,” *Ross*, 267 F. Supp. 3d at 194, a process often referred to as preliminary approval.

If the Court preliminarily approves the settlement, the next stage is to direct that notice be “sent to the class describing the terms of the proposed settlement and explaining class members’ options with respect to the settlement agreement . . . including the right to object to the proposed settlement.” *Id.* at 190. The final stage involves a fairness hearing during which the Court examines the settlement and any objections to it, followed by a decision on whether to approve the settlement. *Id.*

This case is at the preliminary-approval stage. “Whether to preliminarily approve a proposed class action settlement lies within the sound discretion of the district court.” *Stephens v. Farmers Rest. Grp.*, 329 F.R.D. 476, 482 (D.D.C. 2019). That discretion, however, “is constrained by the principle of preference favoring and encouraging settlement in appropriate cases.” *In re Domestic Airline Travel Antitrust Litig.*, 378 F. Supp. 3d 10, 16 (D.D.C. 2019).

The criteria guiding the preliminary-approval determination are supplied by Rule 23(e)(2), which requires consideration of whether: “(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate”; and “(D) the proposal treats class members equitably relative to each other.” In considering these factors, the Court should also look to “the opinion of experienced counsel.” *Stephens*, 329 F.R.D. at 486. Each of these factors supports preliminary approval here.

A. Class Counsel Have Adequately Represented the Provisionally Certified Class.

Class counsel have adequately represented the provisionally certified class. Counsel for Plaintiffs include experienced counsel from the Southern Poverty Law Center and American Civil Liberties Union Foundation of Louisiana. Counsel successfully litigated a motion for preliminary injunction, in which the class was provisionally certified, and continued to vigorously represent the provisionally certified class, as the docket of this action reflects.

B. The Agreement Was Negotiated at Arms-Length.

The Agreement was negotiated at arms-length between Plaintiffs' counsel and counsel for the government. The negotiations spanned a period of approximately three years and included numerous meetings among counsel over Zoom (or similar teleconferencing platforms) and exchanges of draft settlement documents.

C. The Relief Provided to the Class Is Adequate.

The relief provided to the class is adequate. Under the terms of the Agreement, the Defendants shall comply with the standards and procedures set forth in the 2009 Parole Directive until the 2009 Parole Directive is amended, modified, rescinded, superseded, or terminated, whichever occurs first. Agreement (Ex. 1 hereto) ¶ 1. The Agreement, moreover, shall remain in effect for two years from its effective date (defined as the date the Agreement is approved by the Court), or until the 2009 Parole Directive is amended, modified, rescinded, superseded, or terminated, whichever occurs first. *Id.* ¶¶ 2, 17.

If within the two years following approval of the Settlement Agreement, ICE issues a new policy directive affecting class members, the successor policy will need to provide for: (1) upon finding of credible fear, ICE's consideration of parole of such "arriving aliens"; (2) for such "arriving aliens", parole, pending their section 240 removal proceedings, if the noncitizen

establishes that he or she is neither a flight risk nor a danger to the community, if release is warranted for an urgent humanitarian reason or to serve a significant public benefit, and if no additional factors weigh against the release of the noncitizen, such as serious adverse foreign policy consequences or overriding law enforcement interests; (3) individualized determinations of the foregoing factors; and (4) written notification of decisions not to release. *Id.* ¶ 3.

Separately, if parole is denied, the local ICE Enforcement and Removal Operations field office will provide an initial written denial to the noncitizen, and if represented, to the noncitizen's attorney of record. The written denial will provide a brief explanation for the reasons denying parole and a notification that the noncitizen may request redetermination based upon changed circumstances or additional evidence relevant to the noncitizen's identity, security risk, or risk of absconding. The decision will be sent via e-mail whenever possible, and in the absence of an email address for the attorney of record, via traditional mailing. For detained individuals who are pro se, a copy of the denial will be provided to the noncitizen by the ICE staff at the respective facility in which they are detained. ICE will provide an oral translation of the denial to detained individuals who are pro se where those individuals cannot communicate effectively in English. *Id.* ¶ 4.

Defendants will continue to provide periodic reporting to the Court from the New Orleans field office on a quarterly basis in the same format as has occurred during the pendency of the above-captioned action for the duration of the Settlement Agreement but not to exceed December 31, 2025. *Id.* ¶ 5. In addition, ICE Enforcement and Removal Operations will dedicate personnel at the headquarters level that will oversee implementation of the 2009 Parole Directive or any successor policy and work to ensure a consistent national application, including providing guidance to the field nationwide, ensuring sufficient training, and overseeing reporting. ICE Enforcement and Removal Operations will also identify which process at the headquarters level

permits requests for review of denials to be decided, including designating an appropriate senior level position to render such decisions. *Id.* ¶ 8.

ICE, moreover, will implement compulsory, nationwide yearly online training on the 2009 Parole Directive, including a test component added at the end of the training for retention and absorption purposes, until such time as the 2009 Parole Directive is amended, modified, rescinded, or terminated, whichever occurs first. New hires will participate in this training within sixty (60) days of their start date. *Id.* ¶ 9. ICE also will send a broadcast message to the workforce reminding field offices of their obligations under the 2009 Parole Directive or any successor policy. *Id.* ¶ 10.

The New Orleans Field Office, for so long as the Settlement Agreement remains in effect, will provide notice of the Settlement Agreement to provisional class members by posting notice in each detention center where class members are detained and by providing written notice to individual detainees when they assume class-member status. Such notice shall be posted in the English, Spanish, Arabic, and Russian languages. *Id.* ¶ 11.

Finally, Defendants shall pay Plaintiffs the amount of \$75,000 in full satisfaction of any claim for reasonable attorneys' fees and costs incurred in this matter, including attorneys' fees and costs incurred in connection with the final approval procedures set forth in paragraph 20 of the Agreement. This payment will be made in accordance with instructions provided by Plaintiffs' counsel. Counsel for Plaintiffs shall be responsible for allocating the payment among themselves and Plaintiffs. *Id.* ¶ 6.

In exchange for the above, Plaintiffs release any and all claims, demands, rights, and causes of action of whatsoever kind and nature (including any claim for attorney fees, litigation expenses, and/or costs) against Defendants, whether in their official or individual capacities, arising from, or related to, the subject matter that gave rise to the above-captioned lawsuit, including any

determinations made with respect to them under the 2009 Parole Directive. Plaintiffs agree that no further suit will be instituted for the same causes of action that have been asserted herein or for any other causes of action arising out of the incidents or circumstances that gave rise to this suit, including any claims to attorneys' fees and costs. *Id.* ¶ 13. Plaintiff and Plaintiffs' counsel also agree and consent to Defendants' counsel filing a Stipulation of Dismissal with the Court at any time following expiration of the Settlement Agreement (as that term is defined in paragraph 2 of the Agreement), and that such filing shall constitute a dismissal of the above-captioned action with prejudice pursuant Rule 41(a)(1)(A)(ii). Plaintiff also agree that the sole remedy for any material breach of the Settlement Agreement by a Defendant is the reinstatement of the claims asserted in the above-captioned action and that no claim for specific performance, injunctive relief, or mandamus shall lie against any Defendant to compel their compliance with the obligations set forth in this Settlement Agreement. *Id.* ¶ 14.¹ The Settlement Agreement provides that no class member may opt out of the Agreement. *Id.* ¶ 20(e).

Accordingly, accounting for the costs, risks and delay of trial and appeal, the effectiveness of the proposed method of distributing relief to the class, and the terms of the proposed award of attorneys' fees, the relief provided to the class is adequate. *See* Fed. R. Civ. P. 23(e)(2)(C).

¹ This provision seeks to comply with Department of Justice settlement principles originally expressed in the March 13, 1986 Memorandum from then Attorney General Edwin Meese III to All Assistant Attorneys General and All United States Attorneys, available at <https://www.archives.gov/files/news/samuel-alito/accession-060-89-1/Acc060-89-1-box9-memoAyer-LSWG-1986.pdf> (last visited Oct. 14, 2024). The Meese Memorandum provided in relevant part that: "In any settlement agreement in which the Secretary or agency administrator agrees to exercise his discretion in a particular way, where such discretionary power was committed to him by Congress or the Constitution to respond to changing circumstances, to make policy or managerial choices, or to protect the rights of third parties, the sole remedy for the department or agency's failure to comply with those terms of the settlement agreement should be the revival of the suit." *Id.* § II.B.2. While the constitutional dimension of the Meese Memorandum was later clarified by the Department's Office of Legal Counsel, it remains a Department settlement principle to avoid inhibiting the exercise of agency discretion through settlements. *See* 28 CFR § 0.160(d)(3), (5).

D. The Agreement Treats Class Members Equitably Relative to Each Other.

As the above-described terms reflect, the Settlement Agreement also treats class members equitably relative to each other. Accordingly, the Settlement Agreement satisfies the fourth consideration under Rule 23(e)(2).

E. Class Counsel Support the Settlement.

The final relevant factor is not enumerated in the text of Rule 23, but it is well-settled in the case law. Under this Court's cases, "the opinion of experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement." *Prince v. Aramark Corp.*, 257 F. Supp. 3d 20, 26 (D.D.C. 2017). Counsel for both parties "are clearly of the opinion that the settlement in this action is fair, adequate, and reasonable," which only further confirms its reasonableness. *Cohen v. Chilcott*, 522 F. Supp. 2d 105, 121 (D.D.C. 2007).

III. The Agreement Provides for Notice to the Settlement Class.

Due process requires that notice to class members be "reasonably calculated, under all the circumstances, to apprise [them] of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank Tr. Co.*, 339 U.S. 306, 314 (1950). Rule 23(e)(1) similarly requires that notice be directed in a "reasonable manner to all class members who would be bound by the proposal." The proposed notice meets these requirements.

The proposed notice, which is attached as Exhibit A to the Settlement Agreement, summarizes the terms of the Agreement. Pursuant to the Settlement Agreement, moreover, ICE will post the Class Notice for at least sixty days in each detention center where class members are detained at facilities within the jurisdiction of the New Orleans Field Office. The notice will be posted in the English, Spanish, Arabic, and Russian languages. Agreement ¶ 20(c). In addition, counsel for Plaintiffs will post the Class Notice for at least sixty days in a reasonably accessible

location on a website of the Southern Poverty Law Center and the American Civil Liberties Union Foundation of Louisiana. *Id.*

CONCLUSION

In light of the above, the parties jointly request that the Court preliminarily approve the Settlement Agreement; certify the Settlement Class; approve the Class Notice; direct the notice to be provided to the Class as proposed in section 20(c) of the Settlement Agreement; and schedule a Fairness Hearing.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HEREDIA MONS, et al.,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, et al.,

Defendants.

Civil Action No. 19-1593 (JEB)

PROPOSED ORDER

UPON CONSIDERATION of the Joint Motion for Preliminary Approval of Class Action Settlement (“Joint Motion”), and the entire record herein, it is hereby ORDERED that:

1. The Joint Motion is GRANTED;
2. After a preliminary review, the Settlement Agreement appears to be fair, reasonable, and adequate. The Settlement Agreement: (a) resulted from arm’s-length negotiations between experienced counsel; (b) eliminates the risk, costs, delay, inconvenience, and uncertainty of continued litigation; (c) does not provide undue preferential treatment to Class Representatives or to segments of the Class; (d) does not provide excessive compensation to counsel for the Class; and (e) is therefore sufficiently fair, reasonable, and adequate to warrant providing notice of the Settlement Agreement to the Class. Accordingly, the Court preliminarily approves the Settlement, subject to further consideration at the Settlement Hearing described below.
3. The provisionally certified class, as defined in the Court’s January 9, 2020, provisional certification order, is certified as a class for purposes of the Settlement Agreement.
4. The Class Notice to the Class Members attached as Exhibit A to the Settlement Agreement is approved.

5. A hearing (the “Fairness Hearing”) shall be held before this Court on _____, at _____ a.m./p.m. at the United States District Court for the District of Columbia, 333 Constitution Avenue N.W., Washington D.C. 20001 for the following purposes:

- a. to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- b. to consider Class Members’ objections to the Settlement, if any; and
- c. to rule upon such other matters as the Court may deem appropriate.

6. The Court may adjourn the Fairness Hearing without further notice to the members of the Class and reserves the right to approve the Settlement Agreement with such modifications as may be agreed upon or consented to by the parties and without further notice to the Class where to do so would not impair Class Members’ rights in a manner inconsistent with Rule 23 and due process of law.

7. The Court will consider comments or objections to the Settlement Agreement only if such comments or objections and any supporting papers comply with the following: that on or before sixty (60) days after issuance of this Preliminary Approval Order, any Class Member who wishes to submit comments or object to the fairness, reasonableness, or adequacy of the Settlement Agreement must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support their status as a Class Member, and whether the Class Member intends to appear at the Fairness Hearing. The Parties will have ten (10) days following the objection period in which to submit answers to any objections that are filed with the Clerk of Court.

IT IS SO ORDERED, this ____ day of _____, 2024.

JAMES E. BOASBERG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Angel Alejandro Heredia Mons; Roland Nchango Tumenta; Dayana Mena Lopez; Y.A.L.; J.M.R.; P.S.P; R.O.P.; Adrian Toledo Flores; Douglas Enrique Puche Moreno; M.R.M.H; F.J.B.H.; and Miguel Angel Giron Martinez; on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Alejandro MAYORKAS, Secretary of Homeland Security; Patrick J. LECHLEITNER, Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; Corey PRICE, Executive Director for U.S. Immigration and Customs Enforcement, in his official capacity; and Mellissa HARPER, Acting Director of New Orleans Field Office, in their official capacities,

Defendants.

Civil Action No. 19-1593 (JEB)

SETTLEMENT AGREEMENT

WHEREAS Plaintiffs Angel Alejandro Heredia Mons; Roland Nchango Tumenta; Dayana Mena Lopez; Y.A.L.; J.M.R.; P.S.P; R.O.P.; Adrian Toledo Flores; Douglas Enrique Puche Moreno; M.R.M.H; F.J.B.H.; and Miguel Angel Giron Martinez, on behalf of themselves and others similarly situated (hereinafter "Plaintiffs"), and Defendants Alejandro Mayorkas, Secretary of Homeland Security; Patrick J. Lechleitner, Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement ("ICE"); Daniel Bible, Executive Director for U.S. Immigration and Customs Enforcement; and Mellissa Harper, Director of New Orleans Field Office;, in their official capacities (hereinafter "Defendants"), seek to resolve

all outstanding issues in the above-captioned matter, and mutually seek an expedited resolution to the outstanding issues in this case,

IT IS HEREBY AGREED, by and between Plaintiffs and Defendants (hereinafter, the “Parties”), by and through their respective undersigned counsel, as follows.

RECITALS

A. In May 2019, Plaintiffs filed the above-captioned lawsuit (the “Lawsuit”), seeking to enjoin Defendants’ alleged practice of categorically denying parole to asylum-seekers in contravention of Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (hereinafter, “the 2009 Parole Directive”) as violative of the Administrative Procedure Act (“APA”), and also alleging that Defendants violated both the APA and the Due Process Clause of the Fifth Amendment to the Constitution in allegedly failing to provide individualized determinations in connection with the terms of the 2009 Parole Directive. Defendants deny these allegations.

B. By order dated September 5, 2019, the Court, among other things, granted Plaintiffs’ motion for preliminary injunction and granted Plaintiffs’ motion for class certification on a provisional basis for purposes of the preliminary injunction.

C. By order dated January 9, 2020, the Court defined the provisionally certified class as follows: “(1) all arriving asylum seekers; (2) who receive positive credible fear determination; and (3) who are or will be detained by U.S. Immigration and Customs Enforcement after having been denied parole by the New Orleans ICE Field Office, including all those denied parole after September 5, 2019.”

TERMS AND CONDITIONS

1. Defendants shall comply with the standards and procedures set forth in 2009 Parole Directive until the 2009 Parole Directive is amended, modified, rescinded, superseded, or terminated, whichever occurs first.

2. The Settlement Agreement shall remain in effect for two years following its Effective Date, or until the 2009 Parole Directive is amended, modified, rescinded, superseded, or terminated, whichever occurs first, subject to the limitation in Paragraph 3.

3. In the two-year period following approval of the Settlement Agreement, should ICE issue a new policy directive affecting parole for “arriving aliens” who have been found to have a credible fear of persecution or torture, such directive, will provide for the following: (1) upon finding of credible fear, ICE’s consideration of parole of such “arriving aliens”; (2) for such “arriving aliens”, parole, pending their section 240 removal proceedings, if the noncitizen establishes that he or she is neither a flight risk nor a danger to the community, if release is warranted for an urgent humanitarian reason or to serve a significant public benefit, and if no additional factors weigh against the release of the noncitizen, such as serious adverse foreign policy consequences or overriding law enforcement interests; (3) individualized determinations of the foregoing factors; and (4) written notification of decisions not to release.

4. If parole is denied, the local ICE Enforcement and Removal Operations field office will provide an initial written denial to the noncitizen, and if represented, to the noncitizen’s attorney of record. The written denial will provide a brief explanation for the reasons denying parole and a notification that the noncitizen may request redetermination based upon changed circumstances or additional evidence relevant to the alien’s identity, security risk, or risk of absconding. The decision will be sent via e-mail whenever possible, and in the absence of an email address for the attorney of record, via traditional mailing. For detained individuals who are pro se,

a copy of the denial will be provided to the noncitizen by the ICE staff at the respective facility in which they are detained. ICE will provide an oral translation of the denial to detained individuals who are pro se where those individuals cannot communicate effectively in English.

5. Defendants shall provide periodic reporting to the Court from the New Orleans field office (“Field Office”) in the same manner and format as has occurred during the pendency of the above-captioned action for the duration of the Settlement Agreement as set forth in paragraph 2 (and not to exceed 24 months commencing on January 1, 2024, or the first day of the month immediately following the Parties’ execution of this Agreement, whichever is earlier) as follows: (a) an initial 7 months of monthly reporting, (b) followed by quarterly reporting.

6. Defendants shall pay Plaintiffs the amount of \$75,000 in full satisfaction of any claim for reasonable attorneys’ fees and costs incurred in this matter, including attorneys’ fees and costs incurred in connection with the final approval procedures set forth in paragraph 20 below (the “Settlement Payment”). The Settlement Payment shall be made by an electronic funds transfer as specified in instructions provided to Defendants’ undersigned counsel by Plaintiffs’ counsel in writing. Defendants will effectuate payment promptly after the receipt of such instructions by Defendants’ counsel following Court approval of this Settlement Agreement. Counsel for Plaintiffs shall be responsible for allocating the Settlement Payment among themselves and Plaintiffs.

7. Plaintiff and Plaintiffs’ counsel agree and consent to Defendants’ counsel filing the Stipulation of Dismissal attached hereto bearing Plaintiffs’ counsel’s printed signature (designated “By Permission”) with the Court at any time following expiration of the Settlement Agreement as set forth in paragraph 2 above, and such filing shall constitute a dismissal of the above-captioned action with prejudice pursuant Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

8. ICE Enforcement and Removal Operations will dedicate personnel at the headquarters level that will oversee implementation of the 2009 Parole Directive or any successor policy and work to ensure a consistent national application, including providing guidance to the field nationwide, ensuring sufficient training, and overseeing reporting. Enforcement and Removal Operations will also identify which process at the headquarters level permits requests for review of denials to be decided, including designating an appropriate senior level position to render such decisions.

9. ICE will implement compulsory, nationwide yearly online training on the 2009 Parole Directive, including a test component added at the end of the training for retention and absorption purposes, until such time as the 2009 Parole Directive is amended, modified, rescinded, or terminated, whichever occurs first. New hires will participate in this training within sixty (60) days of their start date.

10. ICE will send a broadcast message to the workforce reminding field offices of their obligations under the 2009 Parole Directive or any successor policy.

11. The Field Office, for so long as the Settlement Agreement remains in effect, will provide notice of the Settlement Agreement to provisional class members by posting notice in each detention center where class members are detained and by providing written notice to individual detainees when they assume class-member status. Such notice shall be posted in the English, Spanish, Arabic, and Russian languages.

12. By entering into this Settlement Agreement, Defendants make no concessions or admissions whatsoever concerning the factual allegations or merits of the legal claims in the Complaint filed in the Lawsuit. By entering into this Settlement Agreement, Defendants do not waive any available defense to any claim or factual allegation raised in the Complaint in the

Lawsuit. This Settlement Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of Defendants, its agents, servants, employees, or former employees, and it is specifically denied that they are liable to Plaintiffs.

13. Plaintiffs release any and all claims, demands, rights, and causes of action of whatsoever kind and nature (including any claim for attorney fees, litigation expenses, and/or costs) against Defendants, whether in their official or individual capacities, arising from, or related to, the subject matter that gave rise to the Lawsuit, including any determinations made with respect to them under the 2009 Parole Directive. Plaintiffs agree that no further suit will be instituted for the same causes of action that have been asserted herein or for any other causes of action arising out of the incidents or circumstances that gave rise to this suit, including any claims to attorneys' fees and costs.

14. The Parties agree that the sole remedy for any material breach of the Settlement Agreement by a Defendant is the reinstatement of the claims asserted in the Lawsuit and that no claim for specific performance, injunctive relief, or mandamus shall lie against any Defendant to compel their compliance with the obligations set forth in this Settlement Agreement. Should a Defendant be found to have breached the terms of the agreement, the parties agree that the period commencing on the Effective Date of this agreement through the date of any breach shall be excluded for purposes of any applicable statute of limitations or repose.

15. The Parties agree that this Settlement Agreement contains the entire agreement between the Parties. Plaintiffs acknowledge and agree that no promise or representation not contained in this Agreement has been made to it and acknowledges and represents that this Agreement contains the entire understanding between the Parties, and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No

statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced, nor does this Agreement reflect any agreed upon purpose other than the desire of the Parties to reach a full and final conclusion of the litigation and to resolve that suit without the time and expense of further litigation.

16. The Settlement Agreement shall not be construed or understood as a limitation upon Defendants' authority to amend, modify, suspend, rescind, supersede or terminate the 2009 Parole Directive in any manner other than that referenced in paragraph 3 above.

17. The effective date of this Settlement Agreement is the date on which the last of the signatories has signed the Agreement as reflected by the dates appearing by the signature lines below (the "Signature Date") and any final Court approval (to the extent deemed necessary) obtained (the "Effective Date").

18. The Parties agree that this Settlement Agreement may be made public in its entirety. Plaintiffs expressly consent to the release and disclosure of this Agreement pursuant to the Privacy Act, including without limitation 5 U.S.C. § 552a(b), and the Freedom of Information Act.

19. It is contemplated that this Settlement Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

20. The Parties agree to the following final approval procedures:

a. Within 30 days of the Signature Date, the Parties shall jointly move for a Preliminary Approval Order, preliminarily approving this Agreement and finding this settlement to be fair, just, reasonable, and adequate; certifying the Settlement Class in a manner consistent with the Court's January 9, 2020 provisional certification order;

approving the Class Notice to the Class Members; and setting a Fairness Hearing to consider the Final Approval Order and any objections thereto.

b. The joint motion for Preliminary Approval Order shall request that the Court order not later than fourteen (14) days after entry of the Preliminary Approval Order (unless otherwise modified by the Parties or by order of the Court), that the Parties shall effectuate notice to Class Members as described in subsection (c) below.

c. The Parties stipulate to the form of notice under Federal Rule of Civil Procedure 23(e)(1), which is attached as Exhibit A (“Class Notice”).

i. ICE will post the Class Notice for at least sixty (60) days in each detention center where class members are detained at facilities within the jurisdiction of the New Orleans Field Office. Such notice shall be posted in the English, Spanish, Arabic, and Russian languages.

ii. Counsel for Plaintiffs will post the Class Notice for at least sixty (60) days in a reasonably accessible location on a website of the Southern Poverty Law Center and the American Civil Liberties Union Foundation of Louisiana.

d. The joint motion for Preliminary Approval Order shall request that the Court order the following procedure for objections: that on or before sixty (60) days after the Court issues a Preliminary Approval Order, any Class Member who wishes to submit comments or object to the fairness, reasonableness, or adequacy of this Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support their

status as a Class Member, and whether the Class Member intends to appear at the Fairness Hearing. The Parties will have ten (10) days following the objection period in which to submit answers to any objections that are filed with the Clerk of Court.

e. The Parties agree that no Class Member may opt out of any of the provisions of this Agreement.

f. At the Fairness Hearing pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties shall jointly move for entry of the Final Approval Order, substantially in the form of Exhibit B, granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on all Class Members; overruling any objections to the Agreement; ordering that the terms be effectuated as set forth in this Agreement; giving effect to the releases as set forth in paragraph 13 of this Agreement; and retaining jurisdiction to enforce the Agreement until the filing of the Stipulation of Dismissal as provided for in paragraph 7 above.

g. If the Court grants Final Approval, the Parties stipulate that this Agreement shall not be construed as a consent decree or its equivalent.

h. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, the Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the Agreement accordingly for purposes of resubmitting a revised Agreement for the Court's consideration.

i. Except as otherwise provided herein, in the event the Agreement is terminated or modified in any material respect or fails to become effective for any reason, the Agreement shall be without prejudice and none of its terms shall be effective or


enforceable; the Parties to this Agreement shall be deemed to have reverted to their respective status in the Lawsuit as of the date and time immediately prior to the execution of this Agreement; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

j. If the Court rejects this Agreement, neither this Agreement nor any draft thereof, nor any negotiation, documentation, or other part or aspect of the Parties' settlement discussions, nor any other document filed or created in connection with this settlement, shall have any effect or be admissible in evidence for any purpose in the Lawsuit or in any other proceeding, except in a proceeding to enforce the Agreement, and in any event only for the purposes of litigating the Lawsuit.

[SIGNATURE PAGE FOLLOWS BELOW]

IN WITNESS WHEREOF, the parties hereto, have executed this Settlement Agreement

on the dates shown below.


LUZ V. LOPEZ
D.C. BAR #1720589
SOUTHERN POVERTY LAW CENTER
1101 17th St., NW, 7th Floor
Washington, DC 20036
TEL: (404) 387-9314
Luz.Lopez@splcenter.org

CHRISTINA LAROCCA (pro hac vice)
SOUTHERN POVERTY LAW CENTER
2 S BISCAYNE BLVD, STE 3750
MIAMI, FL 33101
TEL: (786) 347- 2056
christina.larocca@splcenter.org

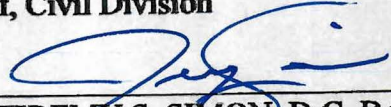
NORA AHMED
ACLU OF LOUISIANA
1340 Poydras Street
Suite 2160
New Orleans, LA 70112
(504) 522-0628
nahmed@laaclu.org

DATED: 9/20/24

Counsel for Plaintiffs

MATTHEW M. GRAVES, D.C. BAR #481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: 
JEREMY S. SIMON, D.C. BAR #447956
Assistant United States Attorney
601 D Street, N.W.
Washington, D.C. 20530
(202) 252-2528
Jeremy.Simon@usdoj.gov

DATED: 9/23/24

Counsel for the United States of America

Exhibit “A”

NOTICE OF PROPOSED SETTLEMENT IN LAWSUIT INVOLVING DETAINEES ELIGIBLE FOR ICE PAROLE DETERMINATIONS

Heredia Mons, et al., v. Mayorkas, et. al, Case No. 19-cv-01593-JEB (D.D.C.)

This notice has three purposes.

The notice: (1) tells you about the proposed settlement terms and the hearing; (2) explains how you may object if you disagree with the proposed settlement terms, and (3) tells you how to obtain more information.

About this Lawsuit:

Mons v. Mayorkas is a class action lawsuit where the Plaintiffs allege that the Department of Homeland Security (DHS), through its Immigration and Customs Enforcement (ICE) New Orleans Field Office (Field Office), failed to comply with ICE Directive No. 11002.1, Parole of Arriving Aliens Found to Have Credible Fear of Persecution, issued December 8, 2009 (2009 Parole Directive).

On September 5, 2019, a federal district court ruled that the Field Office must comply with the 2009 Parole Directive and granted the Plaintiffs’ motion for preliminary injunction and Plaintiffs’ motion for class certification on a provisional basis.

On January 9, 2020, the court defined the class of persons that should receive ICE parole determinations under the 2009 Parole Directive as follows:

“(1) all arriving asylum seekers; (2) who receive positive credible fear determination; and (3) who are or will be detained by U.S. Immigration and Customs Enforcement after having been denied parole by the New Orleans ICE Field Office, including all those denied parole after September 5, 2019.”

Does This Notice Apply to Me?

If you are an asylum seeker, that came to the U.S. seeking admission as an arriving alien, meaning you came to the U.S. at a port-of-entry, or were found in international or U.S. waters and brought to the U.S., and were found to have a positive credible fear of persecution by the U.S. Citizenship and Immigration Services (USCIS) or the Executive Office of Immigration Review (EOIR), then you may be a class member.

The parties have now reached a class settlement agreement, and the Court has preliminarily approved this agreement. A hearing has been scheduled for **DATE** at **TIME** before the Honorable James E. Boasberg, in Washington D.C., for consideration of a proposed settlement of the claims that have been brought on your behalf in this lawsuit.

A. Summary of the Proposed Settlement Agreement:

1. If the 2009 Parole Directive applies to you, the Field Office will give you an opportunity to submit a parole request. If parole is denied, the Field Office will provide you and your attorney of record with an initial written denial. If you do not have any attorney, the Field Office will provide you a copy of the written denial and if you cannot communicate in English, the Field Office will provide you an oral translation of the written denial.
2. Duration of the Agreement: The agreement shall last for 2 years from the effective date, or until the 2009 Parole Directive is amended, modified, rescinded, superseded, or terminated, whichever occurs first.

This Notice is not a solicitation from a lawyer and does not create any benefits.

3. **Successor Policy:** If within the 2 years following approval of the Settlement Agreement, the government issues a new policy directive affecting class members, the successor policy will need to provide for:
 - (1) upon finding of credible fear, ICE's consideration of parole of such "arriving aliens";
 - (2) for such "arriving aliens", parole, pending their section 240 removal proceedings, if the noncitizen establishes that he or she is neither a flight risk nor a danger to the community, if release is warranted for an urgent humanitarian reason or to serve a significant public benefit, and if no additional factors weigh against the release of the noncitizen, such as serious adverse foreign policy consequences or overriding law enforcement interests;
 - (3) individualized determinations of the foregoing factors; and
 - (4) written notification of decisions not to release.
4. **Reporting:** The Field Office must provide periodic reports to the Court during the duration of the lawsuit not to exceed 24 months commencing on January 1, 2024, or the first day of the month immediately following the execution of the Settlement Agreement, whichever is earlier) as follows: (a) an initial 7 months of monthly reporting, (b) followed by quarterly reporting.
5. **Attorneys' fees and costs:** The government will pay Class Counsel \$75,000 in settlement of all claims for fees and expenses related this matter.
6. **Implementation:** The government agrees to dedicate personal to oversee the implementation of the 2009 Parole Directive or any successor policy, the government will provide nationwide yearly online training on the 2009 Parole Directive, and the government will send a broadcast message to the workforce reminding them of their obligations under the 2009 Parole Directive or any successor policy.
7. **Release of claims:** The Plaintiffs agree to release all claims against Defendants, whether in their official or individual capacities, arising from, or related to, the subject matter that gave rise to the Lawsuit, including any determinations made with respect to them under the 2009 Parole Directive.
8. The sole remedy for any material breach of the Settlement Agreement by a Defendant is the reinstatement of the claims asserted in the Lawsuit and no claim for specific performance, injunctive relief, or mandamus shall lie against any Defendant to compel their compliance with the obligations set forth in the Settlement Agreement.

B. Procedures for Objection

You can ask the Court to reject the proposed settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court rejects the settlement, the lawsuit will continue. If that is what you want to happen, you must object. You should object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in-person or through your own attorney or in whatever other manner the Court permits. If you appear through your own attorney, you are responsible for paying that attorney's fees. All written objections and supporting papers must:

1. Clearly identify the case name and number (*Heredia Mons, et al., v. Mayorkas, et. al.*, Case No. 19-cv-01593-JEB (D.D.C.))
2. Be submitted to the Court either: (a) By mailing them to: Clerk's Office, U.S. District Court for the District of Columbia, 333 Constitution Avenue N.W., Washington D.C. 20001. Both the envelope and letter shall state: "Attention: Mons v. Mayorkas, Case No. 19-cv-01593-JEB (D.D.C.), or (b) By filing them in person at any location of the United States District Court for the District of Columbia;
3. Be filed or postmarked on or before **DATE**.
4. Be mailed or emailed to the following counsel of record for the Plaintiffs and Defendants:

This Notice is not a solicitation from a lawyer and does not create any benefits.

For Plaintiffs:

By email: immigration@laaclu.org

By mail: LUZ V. LOPEZ
SOUTHERN POVERTY LAW CENTER
1101 17th St., NW, 7th Floor
Washington, DC 20036

ACLU OF LOUISIANA
ATTN: ANDREW PERRY
P.O. Box 56157
New Orleans, LA 70156

For Defendants:

By email: jeremy.simon@usdoj.gov

By mail: JEREMY S. SIMON
Assistant United States Attorney
601 D Street, N.W.
Washington, D.C. 20530
(202) 252-2528

C. For More Information:

This is a summary notice only. You can contact your attorney or the lawyers who represent class members (Class Counsel) for more information or for a copy of the complete proposed settlement agreement. You can call Class Counsel at 504-522-0628. You or your attorney may also e-mail Class Counsel at: immigration@laaclu.org. Class Counsel do not represent individual noncitizens in their cases before the government. You have the right to contact a separate legal representative of your choice at no expense to the government.

This Notice is not a solicitation from a lawyer and does not create any benefits.

Exhibit "B"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HEREDIA MONS, et al.,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, et al.,

Defendant.

Civil Action No. 19-1593 (JEB)

[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

Presently before the Court is the Parties' Joint Motion for Final Approval of the Settlement. On [date], the Court preliminarily approved the proposed Settlement Agreement and approved the proposed Notice Plan as described in the proposed Agreement at paragraphs 20(b.) and (c.), and it ordered the 60-day notice period to commence on [date]. The notice period ended on [date]. To date, no objections have been filed with the Court, and Class Counsel reports that no objections were lodged with them.

The Court has carefully considered the Parties' Joint Motion, the proposed Settlement Agreement, all filings related to the Settlement, the record in this case, and the factors listed in Federal Rule of Civil Procedure ("Rule") 23(e)(2). The Court held a fairness hearing on the motion on [date], following notice to the class as described above. The Court finds that the Agreement is fair, reasonable, and adequate. The Court hereby finally approves in all respects the Agreement. Therefore, the Agreement shall be consummated with its terms and provisions.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Court grants final approval of the Agreement in all respects, finding the terms of the Agreement are fair, reasonable, and adequate as required by Rule 23(e) and binding on all Class Members.

2. The previously certified class remains the certified class for purposes of the Agreement and is defined as follows: “(1) all arriving asylum seekers; (2) who receive positive credible fear determination; and (3) who are or will be detained by U.S. Immigration and Customs Enforcement after having been denied parole by the New Orleans ICE Field Office, including all those denied parole after September 5, 2019.”

3. Defendants shall provide compliance reporting to the Court consistent with paragraph 5 of the Agreement and for the period set forth in that paragraph.

4. The Court orders Defendants to pay attorneys’ fees and costs in the amount of \$75,000 and in accordance with the provisions of paragraph 6 of the Agreement. The Court finds that this amount is fair, reasonable, and adequate.

5. The Parties shall execute and file a Stipulation of Dismissal of the Action with prejudice pursuant to Rule 41(a)(1)(A)(ii), consistent with paragraph 7 of the Agreement and the period set forth in that paragraph, and the Court retains jurisdiction to enforce the Agreement until the filing of the Stipulation of Dismissal. Pursuant to paragraph 14 of the Agreement, the sole remedy for any material breach of the Settlement Agreement by a Defendant is the reinstatement of the claims asserted in this action and no claim for specific performance, injunctive relief, or mandamus shall lie against any Defendant to compel their compliance with the obligations set forth in the Agreement.

6. The Court hereby gives effect to the release set forth in paragraph 13 of the Agreement.

IT IS SO ORDERED.

Dated this ___ day of ___, 2024.

U.S. District Judge James E. Boasberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HEREDIA MONS, et al.,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, et al.,

Defendant.

Civil Action No. 19-1593 (JEB)

STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties to this action hereby stipulate to dismiss this action with prejudice pursuant to the parties' settlement agreement executed in connection with this matter.

* * *

Respectfully submitted,

Luz V. Lopez (by permission)

LUZ V. LOPEZ

D.C. BAR #1720589

SOUTHERN POVERTY LAW CENTER

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Washington, DC 20036

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NORA AHMED

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Counsel for Plaintiffs

MATTHEW M. GRAVES, D.C. Bar #481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: /s/ Jeremy S. Simon

JEREMY S. SIMON, D.C. Bar #447956

Assistant United States Attorney

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Washington, D.C. 20530

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Counsel for the United States of America