

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION

AMALIA RAMIREZ CASTELANO,  
SOFIA ELIZABETH LOPEZ, and J.S. a  
minor by and through his next friend  
Sonia Raquel Cantu-Sanchez, on their  
own behalf, and on behalf of all others  
similarly situated,

PLAINTIFFS-PETITIONERS,

v.

HILLARY RODHAM CLINTON,  
Secretary of State, PATRICK F.  
KENNEDY, Under Secretary for  
Management, JANICE JACOBS,  
Assistant Secretary of State for Consular  
Affairs, FLORENCE FULTZ, Managing  
Director, Passport Services Directorate,  
and UNITED STATES OF AMERICA,

DEFENDANTS-RESPONDENTS.<sup>1</sup>

Case No. CA M-08057  
(Class Action)

**STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE**

Plaintiffs Amalia Ramirez Castelano; Sofia Elizabeth Lopez; and J.S., a  
minor by and through his next friend Sonia Raquel Cantu-Sanchez, on behalf of  
themselves, the Class and all Class Members (as defined below); and Defendants  
Hillary Rodham Clinton, Secretary of State; Patrick F. Kennedy, Under Secretary  
for Management; Janice Jacobs, Assistant Secretary of State for Consular Affairs;

---

<sup>1</sup> Hillary Rodham Clinton has been automatically substituted in her official capacity as Secretary of State pursuant to Fed. R. Civ. P. 25(d) for Condoleezza Rice. Janice Jacobs has been automatically substituted in her official capacity as the Assistant Secretary for the Bureau of Consular Affairs, pursuant to Fed. R. Civ. P. 25(d) for Maura Harty. Florence Fultz has been automatically substituted in her official capacity as Managing Director, Passport Services Directorate, pursuant to Fed. R. Civ. P. 25(d) for Ann Barrett.

Florence Fultz, Managing Director, Passport Services Directorate; and the United States of America (hereinafter collectively referred to as “Defendants”), by and through their attorneys, hereby enter into this Stipulation and Agreement of Settlement and Release (the “Stipulation”), as of the date beneath Defendants’ Counsel’s signature, effective upon the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS:

A. On February 6, 2008, Plaintiff Amalia Ramirez Castelano filed a Petition for Habeas Corpus and Complaint for Declaratory and Injunctive Relief against Defendants in the United States District Court for the Southern District of Texas. Thereafter, on April 7, 2008, Castelano and Plaintiffs Florencio Gonzalez, Jr., Elvia Estela Elissetche, Arturo Garcia, Sofia Elizabeth Lopez, Jessica Gonzalez, Miriam Sujee Gonzalez, Juan Luis Flores, and Rocio Flores, filed a First Amended Petition for Habeas Corpus and Class Action Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief (hereafter “First Amended Complaint”). Thereafter, on September 9, 2008, Plaintiffs Amalia Ramirez Castelano, Arturo Garcia, Sofia Elizabeth Lopez, Miriam Sujee Gonzalez, Juan Luis Flores, Rocio Flores, J.S., a minor by and through his next friend Sonia Raquel Cantu-Sanchez, David Hernandez, and Juan Aranda moved for leave to file a Second Amended Class Action Complaint and Petition for Declaratory,

Injunctive and Mandamus Relief on behalf of themselves and all others similarly situated against Defendants seeking class certification, designation of Class Counsel, and declaratory and injunctive relief and mandamus. The motion was granted and the Second Amended Complaint deemed filed on September 16, 2009.

B. Plaintiffs Florencio Gonzalez, Jr., Elvia Estela Elissetche and Jessica Gonzalez, named in the First Amended Complaint, were granted and received U.S. passports prior to the filing of the motion for leave to file the Second Amended Complaint and were not named as Plaintiffs in the Second Amended Complaint. Thus, by operation of law, on September 16, 2008, Plaintiffs Florencio Gonzalez, Jr., Elvia Estela Elissetche and Jessica Gonzalez dismissed their claims in their entirety.

C. Plaintiff Arturo Garcia received his U.S. passport after the filing of the motion for leave to file the Second Amended Complaint. On November 5, 2008, the Parties stipulated to the dismissal of the claims of Plaintiff Arturo Garcia in the Second Amended Complaint.

D. On or about January 28, 2009, Plaintiff Miriam Sujee Gonzalez received her U.S. passport, and on January 30, 2009, the Parties stipulated to the dismissal of the claims of Plaintiff Miriam Sujee Gonzalez in the Second Amended Complaint.

E. On or about February 24, 2009, Plaintiffs Juan Luis Flores, David Hernandez, and Juan Aranda received their U.S. passports, and the Parties stipulated to the dismissal of the claims of Plaintiffs Juan Luis Flores, David Hernandez, and Juan Aranda in the Second Amended Complaint on February 27, 2009.

F. On or about May 14, 2009, Plaintiff Rocio Flores received her U.S. passport, and on May 15, 2009, the Parties stipulated to the dismissal of the claims of Plaintiff Rocio Flores in the Second Amended Complaint.

G. On or about June 12, 2009, Plaintiffs Amalia Ramirez Castelano, Sofia Elizabeth Lopez, and J.S., a minor by and through his next friend Sonia Raquel Cantu-Sanchez, moved to sever their individual claims for relief brought under 8 U.S.C. § 1503(a) from their remaining claims.

H. To date, the Court has not granted class certification, designation of Class Counsel, or declaratory or injunctive relief.

I. Plaintiffs, on behalf of themselves and those who are similarly situated, have alleged that the Department of State has engaged in a policy, pattern, and practice of categorically applying heightened scrutiny to a class of passport applicants whose births in Southwestern border states were attended by midwives or birth attendants or whose citizenship is claimed through a parent whose birth in a Southwestern border state was attended by a midwife or birth attendant.

Plaintiffs allege that the Department of State impermissibly and unlawfully applies a heightened burden of proof to these passport applications, subjecting the applicants to burdensome, unreasonable, and excessive demands for documentation of birth in the United States that go far beyond what other applicants are required to submit. Plaintiffs further allege that, even after applicants respond to the demands for additional information, the Department of State, without a proper individualized, evidence-based adjudication of the merits of each application, arbitrarily deems their applications “filed without further action” or otherwise abandoned and closed and refuses to issue them passports.

J. Based on these allegations, Plaintiffs, on behalf of themselves and those who are similarly situated, have asserted claims under the Fifth Amendment for violations of due process and equal protection, the Administrative Procedure Act, 28 U.S.C. § 1361, and 28 U.S.C. §§ 2201-02. By their Second Amended Complaint, Plaintiffs seek declaratory, injunctive, and mandamus relief on behalf of themselves and a proposed class. Plaintiffs additionally raised claims individually under 8 U.S.C. § 1503(a).

K. Defendants deny all liability with respect to the instant Action; deny that they have engaged in any wrongdoing; deny the allegations in the Complaint, First Amended Complaint, and Second Amended Complaint except as otherwise admitted in Defendants’ Answer; deny that they committed any violation of law;

deny that they acted improperly in any way; and deny liability of any kind to the Named Plaintiffs, the Class, or the Class Members, but have agreed to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and terminate the Action and any and all Settled Claims as defined in paragraph 13.

L. The Parties have conducted arm's length negotiations to settle the litigation and believe it is in their mutual interests to avoid the risks and burdens of trial in this matter. Accordingly, the Parties enter into this Agreement to resolve all claims brought forth in the instant Action and to dismiss the Action with prejudice. The Parties believe that settlement addresses the issues in dispute and achieves the best relief possible consistent with the interests of the Named Plaintiffs, the Class, and all Class Members.

M. After considering the benefits that the Named Plaintiffs, the Class, and the Class Members will receive from settlement of the Action and the risks of litigation, Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and in the best interests of the Named Plaintiffs, the Class, and the Class Members; have agreed that the Released Parties should be released from the Settled Claims pursuant to the terms and provisions of this

Stipulation; and have agreed to the dismissal with prejudice of all Settled Claims as defined in paragraph 13.

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

#### **I. DEFINITIONS:**

Wherever used in this Stipulation, the following terms have the meanings set forth below:

1. “Action” means the above-captioned action pending in the United States District Court for the Southern District of Texas, Case No. CA M-08-057.
2. “Class” means, for purposes of this settlement only, a plaintiff class certified pursuant to Rule 23 of the Federal Rules of Civil Procedure, comprising all persons who filed an application, domestically, for a U.S. passport between April 8, 2003 and the Effective Date of Settlement, and who: (1) submitted a birth certificate indicating a domestic, non-institutional birth; (2) that was certified, filed, or registered by a midwife or other birth attendant within the

state of Texas; and (3)(a) were issued a letter stating that their application was filed without further action, abandoned, or closed or (b) were not sent a decision on their application and filed such application prior to September 15, 2008. Persons shall be excluded from the Class (i) who were issued a passport; (ii) who were sent a passport denial letter; (iii) who have a pending application which was filed on or after September 15, 2008; (iv) who re-file passport applications overseas; (v) who previously dismissed lawsuits, with prejudice, brought under 8 U.S.C. § 1503, or had judgment entered against them in § 1503 proceedings; or (vi) who had applications filed without further action based on one of the following reasons:

- Insufficient/no photograph;
- Insufficient/no signature;
- Insufficient/no fees;
- Insufficient/no identification;
- Incomplete application form;
- Failure to apply in person at a passport agency/center or acceptance facility;
- Delayed birth certificate;
- 22 C.F.R. § 51.60; or
- 22 C.F.R. § 51.61.

The Class ceases to exist, and all membership in the Class ends, upon the termination of this Stipulation pursuant to paragraph 87.

3. “Class Member” means any person who is within the Class definition, including the Named Plaintiffs, and who is not otherwise excluded.

4. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement provided for in this Stipulation shall become effective, as set forth in paragraph 83.

5. “Plaintiff(s)” or “Named Plaintiff(s)” means Amalia Ramirez Castelano, Sofia Elizabeth Lopez, and J.S., a minor by and through his next friend Sonia Raquel Cantu-Sanchez.

6. “Plaintiffs’ Counsel” or “Class Counsel” means the American Civil Liberties Union Foundation; Hogan & Hartson LLP; American Civil Liberties Union Foundation of Texas; and Lisa S. Brodyaga, Esq. on behalf of Refugio del Rio Grande, Inc. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

7. “The Department” refers to the United States Department of State, including but not limited to the Bureau of Consular Affairs, the Passport Services Directorate, and the Regional Passport Agencies and Centers.

8. “Adjudication” refers to the process by which the Department reviews applications for passports, conducts individualized inquiries and investigations, reviews documents and supporting materials submitted by passport applicants, and decides to issue a passport or deny a passport application.

9. “SBA Adjudicator” or “SBA Official” is a senior-level adjudicator at the GS-11 level or higher in the Houston Passport Agency, the National Passport Center, and the Charleston Passport Center and at the FS-04 level or higher at overseas posts in Mexico. The Department may also designate SBA Adjudicators at any other Agency or Center as necessary.

10. “The Panel” refers to the three member panel of SBA Adjudicators responsible for final review and adjudication of all Class Member passport applications, unless a decision to issue has been made previously by an SBA Adjudicator.

11. “SBA List” refers to the list maintained by the Department on which appear the names of midwives and/or birth attendants (referred to as Suspect Birth Attendants) who have been convicted of birth certificate fraud and/or who the Department has a reasonable suspicion of having engaged in birth certificate fraud, based on: a) a conviction or plea agreement involving a crime of document fraud; b) an admission, confession, or statement of implication made by the birth attendant, a client, or a witness pertaining to birth certificate fraud by the birth attendant; c) information received from a law enforcement agency regarding the birth attendant and his/her involvement in birth certificate fraud; d) documents or other information supporting a reasonable suspicion that the birth attendant has engaged in birth certificate fraud; or e) disciplinary action taken by the Texas

Midwifery Board or other state licensing agency for falsely registering births or falsely filing birth records. The Department will continuously review, revise, and maintain the SBA list. The SBA list will not be disseminated in any form to Class Counsel. For purposes of this paragraph, reasonable suspicion shall mean that there is an articulable and reasonable basis for the belief that an individual has engaged in birth certificate fraud. Mere guesses or hunches are insufficient.

12. “Released Parties” means any and all of the Defendants, their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

13. “Settled Claims” means any and all actions, in law or equity, that were asserted or that could have been asserted by Class Members or anyone acting on behalf of or in place of a Class Member, based upon the facts alleged in the Second Amended Complaint or that could have been alleged in the Second Amended Complaint and that arise from the subject matter of this action, including but not limited to claims brought under the U.S. Constitution, including but not limited to claims under the Fifth Amendment and claims of violations of the Due Process Clause and/or Equal Protection Clause; claims brought pursuant to the Administrative Procedures Act (5 U.S.C. § 701, *et seq.*); claims seeking a Writ of Mandamus; and any other actions seeking Declaratory or Injunctive relief brought under 28 U.S.C. § 1346(a)(2); 28 U.S.C. § 2201-2202; and/or 28 U.S.C. § 1361.

Only individual actions against the Department brought under 8 U.S.C. § 1503(a) are excepted from the claims settled with prejudice by this action, subject to paragraph 29.

14. “Settlement” means the settlement provided for in this Stipulation.

15. “Settlement Agreement” and “Stipulation” as used herein shall refer to the entirety of this document, including all exhibits and attachments. Either term may be used herein interchangeably.

## **II. RELEASE; SCOPE AND EFFECT OF RELEASE**

16. On the Effective Date, the Named Plaintiffs, the Class, and the Class Members, on behalf of themselves, their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners, and any persons they represent (“Releasing Parties”), shall be deemed to have, and by operation of the Final Judgment shall to the extent provided herein, fully, finally, and forever release, relinquish, and discharge the Released Parties of and from any and all of the Settled Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Released Parties.

17. In consideration for the releases contained herein, and subject to this Stipulation’s conditions, the Department shall institute the policies, procedures,

and terms set forth below for the adjudication of the passport applications of all Class Members during the existence of this Stipulation.

### **III. SETTLEMENT TERMS AND PROCEDURES**

#### **A. Acknowledgments and General Adjudication Standards.**

18. Nothing in this Stipulation shall be read to modify, alter, shift, or otherwise change the burden of proof standards on all passport applicants set forth in 22 C.F.R. § 51.40. The burden of proof remains on the applicant, including a Class Member, who must establish his or her eligibility for a passport by a preponderance of the evidence, except where otherwise provided by statute. Moreover, nothing in this Stipulation shall be read to modify, alter, or otherwise change the Department's discretion to request evidence as set forth in 22 C.F.R. § 51.45 from any passport applicant, including a Class Member.

19. The Parties acknowledge that the preponderance of the evidence is a "more likely than not" standard. The Department agrees to reinforce this standard through its on-going training procedures and continuing education methods.

20. The Department will issue a passport when the applicant has demonstrated U.S. citizenship or nationality by a preponderance of the evidence, the applicant's identity is not reasonably in question, the applicant has complied with all requirements, procedures, and instructions for filing a passport application,

and there are no statutory, regulatory, or other legally sufficient reasons not to issue.

21. In the event that the Department sends a fee-free letter or Customer Information Letter (CIL) to an applicant who is not part of the Class, such action shall not be deemed to be an expansion of the Class or the Class definition.

22. Nothing in this Stipulation, except that which is specifically stated herein, shall modify, change, or otherwise affect the Department's duties, rights, practices, and procedures pursuant to any statute or regulation.

23. Nothing in this Stipulation shall modify, change, or otherwise affect the Department's duties and discretionary right to review any passport application for fraud, institute internal fraud investigations, and/or refer fraud matters to prosecutorial agencies. Nothing in this Stipulation shall change, modify, or otherwise alter the policies and procedures the Department maintains for instituting passport fraud investigations by the Fraud Prevention Unit and/or by Diplomatic Security.

24. Nothing in this Stipulation shall be construed in any manner to imply, assert, or otherwise claim that the Department applies different standards of adjudication to non-institutional births generally.

25. The Department no longer issues "filed-without-further-action" letters and shall no longer designate any passport application as abandoned. The

final disposition of all fee-paid passport applications, as of September 15, 2008, is: (a) issuance of a passport; (b) denial in writing; or (c) withdrawal of the application in writing by the applicant.

26. Nothing in this Stipulation shall affect, change, or otherwise modify the Department's policies, procedures, and abilities to deny any passport application (Class Member or other applicant) pursuant to 22 C.F.R. §§ 51.60 and/or 51.61.

27. The Department acknowledges that it shall not deny a passport application of a Class Member based solely on the fact that the Department previously sent the applicant a "filed without further action" letter. However, the Department may rely on information previously acquired or submitted with an earlier application.

28. The Department shall make a good faith effort to adjudicate Class Member passport applications in a reasonably timely manner. However, when considering the reasonableness of time for adjudication, appropriate credit shall be given for the time required by any Class Member to respond to a CIL and/or any additional requests for information, as well as any requested extensions.

29. A Class Member may bring an individual action in United States District Court under 8 U.S.C. § 1503 only after completing re-adjudication under the procedures outlined in Section III; provided, however, that any Class Member

who has filed a lawsuit under 8 U.S.C. § 1503 on or before three (3) days following approval by the Court of this Stipulation, as described in paragraph 83(b), may elect (i) to have his or her passport application re-adjudicated pursuant to the procedures outlined in Section III, or (ii) to maintain and litigate his or her individual action under 8 U.S.C. § 1503. If the Class Member elects re-adjudication, then the Class Member's lawsuit shall be stayed, or dismissed without prejudice if ordered by the court. However, the re-adjudication of such passport application shall be held in abeyance until the dismissal or stay of such lawsuit. Any Class Member who files a § 1503 lawsuit more than three (3) days after approval by the Court of this Stipulation, but prior to completing re-adjudication, shall have such lawsuit dismissed without prejudice.

**B. Class Member Re-adjudication Procedures**

30. The Department will re-adjudicate passport applications of all Class Members, in accordance with the procedures provided for herein.

31. Class Members are entitled to re-adjudication of their passport applications without the payment of an additional application fee but subject to eligibility procedures. The Department will identify those eligible for a fee-free adjudication but it is incumbent on the Class Member to first submit certain information by the deadline stated in paragraph 32. The Class Member must submit in writing his or her full name, place of birth, date of birth, current address,

last four numbers of his/her social security number, approximate date of initial application, and his/her mother's full name for identification purposes. Such submissions shall be made by mail or electronically through an internet address that the Department shall create for this purpose. Mailing address and internet information shall be provided pursuant to the Notice Provisions herein. If applying by mail, the Class Member also shall submit a copy of the filed-without-further-action letter he or she previously received, if available. The Department shall then confirm/deny the applicant's eligibility and status as a Class Member and, if confirmed, will send (i) a letter inviting the Class Member to reapply without payment of an additional passport application fee ("fee-free letter") and (ii) a CIL. The Class Member is responsible for any other applicable fees, including the execution fee if the Class Member re-applies at a passport acceptance facility (e.g., U.S. Post Office). The Class Member must personally execute a new application at any U.S. Passport Agency, passport acceptance facility, or mobile unit (as provided in paragraph 33), show valid identification at the time of execution, and include required documentation (photos, birth certificate, etc.), a copy of the fee-free letter and may include any other additional relevant documentation.

32. The deadline for requesting fee-free re-adjudication is 11:59 p.m. on June 1, 2010, and for submitting a fee-free letter is 5:00 p.m. on December 31 2010. Class Members may continue to re-apply for a passport after that date (and

before the expiration of the Settlement as set forth herein) but shall not be entitled to re-adjudication without the payment of the application fee.

33. Any Class Member who wishes to avoid paying the execution fee may re-apply in person at the Houston Passport Agency or any other U.S. Passport Agency. In addition, in an effort to provide an alternative, the Department agrees to provide temporary mobile intake facilities in five (5) southern border locations for one or two days each. These intake facilities will accept Class Member passport applications, and only from those who have the fee-free adjudication letter. The five (5) locations and dates shall be chosen by the Department and will begin after June 1, 2009. The Department will make every effort, to the extent practicable, to include information concerning the dates and locations of the mobile units on its website and in the fee-free letter.

**C. Requests for Supporting Evidence.**

34. A Class Member who submits a birth certificate that otherwise complies with 22 C.F.R. § 51.42(a) will not be denied a passport solely on the basis that the birth certificate was executed by a birth attendant whose name appears on the SBA List. However, the Class Member will be required to provide additional evidence of birth in the United States. The Parties acknowledge that such requests for evidence, as set forth herein, are reasonable and not unduly burdensome.

35. Additional evidence will be requested from the Class Member first through a CIL sent to the Class Member.

36. A sample CIL is attached hereto as Exhibit A to this Stipulation. The CIL will be in English and Spanish. The Department will not modify the substance of the information conveyed in the CIL sent to Class Members while this Stipulation is in effect, unless Class Counsel agrees in writing to such modifications, subject to the following exception: The Department, may, at its discretion, modify the substance of the CIL by including reference to and enclosure of an Office of Management and Budget (OMB) biographical questionnaire and removing from the CIL any information which is repetitive of what is included in the biographical questionnaire.

37. Nothing in this Stipulation prohibits the Department from requesting secondary evidence under 22 C.F.R. § 51.42(b) or requesting additional documents consistent with the Departments' discretion to do so as set forth in 22 C.F.R. § 51.45.

38. Class Members who do not submit a response to the CIL with their passport application will be given ninety (90) days to respond to CILs; Class Members who request additional time, in writing, prior to the end of the first ninety (90) day period shall be automatically given an additional forty-five (45) days to

respond. Additional periods of time may be given at the discretion of the SBA Adjudicator/the Panel, and any reasonable requests will be granted.

39. Unless the Class Member indicates that his or her response to the CIL is a partial response, once a response is received, the SBA Adjudicator shall proceed within a reasonable time to (i) adjudicate and approve issuance of the passport; (ii) contact the Class Member and seek additional information (as outlined below); or (iii) refer the application to the Panel.

40. Any failure by any Class Member to respond in writing to a CIL will not prevent the Class Member's application from being adjudicated by the SBA Adjudicator or from going to the Panel for further review and final adjudication as described below in Section D. If a Class Member fails to respond within ninety (90) days to the CIL, the SBA Adjudicator may choose to adjudicate the application based on the information available and issue a decision on that basis. If the SBA Adjudicator does not issue a passport, the SBA Adjudicator shall then refer the application to the Panel consistent with procedures set forth in section D below.

41. Additional Requests for Information. After a Class Member submits a response to a CIL, the SBA Adjudicator will adjudicate the application. If the SBA Adjudicator decides not to issue the passport, the case will be reviewed by the Panel. The Panel or the SBA Adjudicator may contact the Class Member by

telephone and/or letter and request a personal or telephone interview and/or specific additional information that may assist in the further adjudication of the application, and which is to be submitted within sixty (60) days.

42. Nothing in this Stipulation is intended to prohibit or restrict the Department from further communication with a Class Member with regard to requesting additional documents or information which may assist the Department in the adjudication of the Class Member's application, except as provided in paragraph 47.

#### **D. Panel Review**

43. If, after review of all information available, and what was provided in response to CILs and/or any additional requests, the SBA Adjudicator adjudicates the application and determines that the information is insufficient to establish an entitlement to a passport under the preponderance of the evidence standard, the SBA Adjudicator shall then refer the application to the Panel for review and final adjudication.

44. The Panel shall review all Class Member applications in which the SBA Adjudicator has concluded not to issue a passport. Consistent with paragraph 41, the Panel may request additional information from the Class Member. However, any failure by any Class Member to respond to any request for additional information will not prevent the Class Member's application from being

adjudicated by the Panel. The Panel will review the entirety of the application and all the information collected by the SBA Adjudicator, adjudicate the application, and determine whether to issue the passport or deny the application.

45. If, after reviewing the application, any information provided in response to the CIL, a phone call, a letter requesting specific additional information, or an interview, the Panel decides not to issue a passport, the Department will deny the application. The Class Member will receive a letter informing the Class Member of the specific reasons why the application is being denied. The letter will inform the Class Member that, although the application is denied, he or she may, within sixty (60) days, submit any further information that the Class Member feels specifically rebuts the conclusions asserted in the letter or may proceed with available legal remedies. If the Class Member does not submit any additional information within sixty (60) days, the case shall remain denied. Upon receipt of any such additional information, the Panel will reopen the case and re-adjudicate the application considering the additional information and either issue the passport or deny the application. If denied, a letter will be sent informing the Class Member that his or her passport application was reopened and informing the Class Member of specific reasons why the application was then denied. No further review will be provided absent the filing of a new fee-paid application.

46. The Department will, in accordance with 22 C.F.R. § 51.46, return to the Class Member original documents submitted in support of his or her application, and the written notice shall in such instances identify the documents being returned to the Class Member.

47. When a Class Member provides a letter of representation to the Department indicating that the Class Member is represented by an attorney in the particular matter, the Department will make a good faith effort to copy the attorney on all further correspondence with the Class Member pertaining to that matter.

**E. Application of Standards and Procedures to Applicants not part of the Class**

48. The Department agrees that the standards and procedures for adjudicating passport applications set forth above in Sections III.A., III.C. and III.D. also will be applied to all applicants not otherwise part of the Class who submit a birth certificate indicating a domestic, non-institutional birth that was certified, filed, or registered in Texas by a midwife or birth attendant on the SBA list (hereinafter “Applicants”), subject to certain specified exceptions and limitations stated in this Stipulation.

49. Applicants shall not receive fee-free re-adjudication.

50. Domestic Applicants shall receive the benefit of the procedures for CIL/Requests for Additional Information and review by an SBA Adjudicator and the Panel.

51. Overseas Applicants in Mexico shall receive the benefit of the procedures for CIL/Requests for Additional Information and review by an SBA Adjudicator and a Consular Manager in lieu of the Panel.

52. For all other overseas Applicants, the Department will make a good faith effort to provide the procedures for CIL/Requests for Additional Information and review by a trained adjudicator and a Consular Manager in lieu of the Panel.

#### **F. SBA List**

53. An authorized official shall certify on behalf of the Department: (1) the number of midwives or birth attendants on the SBA List as of the Effective Date of Settlement; (2) the number of midwives or birth attendants added, if any, to the SBA List during that period of the Stipulation; (3) the number of midwives or birth attendants removed, if any from the SBA List during that period of the Stipulation; and (4) that this information is true, correct, and complete as of the date of certification. The certification shall also attest that the Department has maintained, reviewed, and, if applicable, modified the list according to the standards set forth in the Definition section. The Department shall provide Class Counsel with an initial certification within sixty (60) days of the Effective Date of Settlement. Thereafter, the Department shall provide Class Counsel with an annual

certification and a final certification within forty-five (45) days of the termination of this Agreement.

## **G. Training Commitments**

54. Within sixty (60) days of the Effective Date, the Department will provide training concerning the adjudication standards and procedures for Class Members to all SBA Adjudicators, including members of the Panels and fraud prevention managers in the Houston Passport Agency, the National Passport Center, and the Charleston Passport Center, and to SBA Adjudicators and Consular Managers in Mexico. This training shall communicate, explain, and reinforce that the commitments, procedures, provisions, and standards set forth in this Stipulation are to be properly effectuated in the adjudication process. It will also include the dissemination and discussion of the principles relating to the preponderance of the evidence standards identified in Exhibit B to this Stipulation. The Department will make a good faith effort to incorporate this same training in its regular, initial, and ongoing training programs for all passport adjudicators. The Department shall maintain a record reflecting who has been trained pursuant to the Stipulation.

55. The Department will conduct additional training every six (6) months thereafter until the Termination Date.

56. The initial training will consist of at least a full day of training and will include newly developed written training materials consistent with this Stipulation and live and/or video conference class-room instruction.

57. The Department will create the position of SBA Official in the Houston Passport Agency, the National Passport Center, the Charleston Passport Center, and at overseas posts in Mexico. This official will have expertise in adjudicating SBA cases, will generally be the primary adjudicator in SBA cases, and may serve on the Panel. The Department may designate SBA Adjudicators or Officials at any other Agency or Center as necessary, and train them accordingly. The Panel will be comprised of three SBA officials who will be given additional training regarding adjudication of SBA cases and their role in the process.

## **H. Community Outreach Efforts**

58. The Department and Class Counsel agree to engage in outreach efforts to Texas border communities. The Department and Class Counsel will coordinate regarding the location(s), date(s) and subject matter(s) of such outreach, as appropriate. Such outreach efforts may include presentations or publicly disseminated statements on the following: the key substantive and procedural terms of this Stipulation; that the Department employs race neutral policies, practices and procedures in adjudicating passport applications; that birth in the United States by the applicant and eligibility to apply for a U.S. passport based on

that birth is not in any way affected by the immigration status of either birth parent or other family members; that non-institutional birth in the United States is not in and of itself a prohibition to qualifying for a U.S. passport; that there has been significant fraud by midwives and other birth attendants certifying births as occurring in the United States when they have not occurred in the United States; and that it is a crime to knowingly submit a fraudulent document in support of a passport application; potential publicly available sources for locating documents that may support a showing of birth in the United States and assist in promoting an understanding of the types of documents that would be useful in establishing birth in the United States.

## **I. Miscellaneous Provisions**

59. Within twenty-one (21) days of the Effective Date, the Department will communicate the details of the class settlement and availability of the re-adjudication process to all Class Members by advertising in the following newspapers: *El Paso Times*, *Diario de El Paso*, *Laredo Morning Times*, *The Brownsville Herald*, *El Nuevo*, and *Del Rio Herald*. These advertisements (the text of which is provided here as Exhibit C) shall appear in the Sunday paper for six (6) weeks in both English and Spanish.

60. Within twenty-one (21) days of the Effective Date, the Department will inform all relevant staff at Passport Offices and overseas posts in Mexico

about their responsibilities regarding the terms as set forth in this Settlement. The Department will provide Class Counsel with a copy of this final signed guidance, solely for informational purposes, subject to appropriate redactions. Class Counsel shall not disseminate nor disclose the guidance outside of Class Counsel.

61. Where the sharing of information among Defendants and any other agency is required by this Stipulation, Defendants shall comply with all requirements of the Privacy Act.

62. If the Department is required to provide Class Counsel with personal identifying information of Class Members, Class Counsel shall use the information only to comply with the Stipulation's terms. Class Counsel may not duplicate or disseminate the personal identifying information, except where dissemination is necessary to comply with the requirements of the Stipulation, and shall destroy or return the personal identifying information within thirty (30) days of the termination of this Stipulation and Settlement Agreement pursuant to paragraph 87, except for one copy which may be retained in Class Counsel's archive of the Action until thirty (30) days after the running of the Texas Statute of Limitations or other potentially applicable statute of limitations for an attorney malpractice claim accruing on or before the termination of the obligations of the Parties under this Stipulation pursuant to paragraph 87 of this Stipulation. Class

Counsel assumes all obligations and responsibilities for the storage, retention, use, and release of the data consistent with applicable law.

63. The Department and Class Counsel will mutually approve (a) all Notices to the Class; and (b) the Notice of Final Settlement Agreement.

64. All press releases issued by the Department or Class Counsel regarding this Settlement shall be consistent with the provisions of this Agreement, including all of the paragraphs in the Preamble.

65. Class Counsel has had the opportunity to review and provide written comments on the materials identified in the Exhibits and consents to their use for the purposes identified in this Stipulation.

66. On or about seven (7) months after the Effective Date and every six (6) months thereafter until the termination of this Agreement, the Department shall provide Class Counsel with a report concerning the submission and adjudication of passport applications by Class Members (“Report”). The Report shall be provided as a functional spreadsheet in electronic format and shall include a separate row for each application and columns containing the following information for each application: (1) the date of the passport application, (2) the date, if any, of each written request for information, (3) the date, if any, of each request for an extension of time, (4) the date, if any, the application was submitted to the Panel, (5) the date, if any, of any passport issuance, and (6) the date, if any,

of any application denial. Within forty-five (45) days of the termination of this Agreement, the Department shall provide Class Counsel with a final Report containing the aforementioned information.

#### **IV. CONTINGENT JURISDICTION**

67. The Parties agree that this Court will not be asked to exercise jurisdiction to supervise the implementation of this Stipulation. The Parties further agree that this Court shall have contingent jurisdiction only over the matters specifically set forth in Section V and only once the Parties have exhausted the process for dispute resolution provided therein.

68. The Court shall not have jurisdiction over any claims arising overseas, unless otherwise provided by law, and nothing in this Settlement Agreement and Stipulation shall be meant to concede or confer jurisdiction in this or any other district court over any overseas claims whether or not arising from this Settlement Agreement and Stipulation.

#### **V. DISPUTE RESOLUTION PROCEDURES**

69. The following dispute resolution process will be followed:

70. Starting from the Effective Date, upon learning of any fact or facts that constitute the basis for asserting that a Party, without notice or good cause shown, has materially failed to comply with any term of the Stipulation and Settlement Agreement, the Initiating Party shall promptly notify the other Party

(the “Responding Party”) in writing of the fact or facts that support the contention and request a written response with respect thereto. Such allegations of violations of this Stipulation and Settlement Agreement must be substantiated with specific, detailed, and timely information about the violation sufficient to enable the Responding Party to investigate and respond. Within thirty (30) days after receipt of the notice, the Responding Party shall notify the Initiating Party in writing of the Responding Party’s position and any action it has taken or intends to take in connection therewith.

71. Starting from the Effective Date, upon learning of any fact or facts that constitute the basis for asserting that a Party, without notice or good cause shown, has engaged in a pattern or practice constituting substantial noncompliance with the terms of this Stipulation and Settlement Agreement, or that any Party has expressly repudiated any of its terms, the Initiating Party shall promptly notify the other Party (the “Responding Party”) in writing of the fact or facts that form the basis of the contention and request a written response with respect thereto. Such allegations of violations of this Stipulation and Settlement Agreement must be substantiated with specific, detailed, and timely information about the violation sufficient to enable the Responding Party to investigate and respond. Within sixty (60) days after receipt of the notice, the Responding Party shall notify the Initiating

Party in writing of the Responding Party's position and any action it has taken or intends to take in connection therewith.

72. During the time period following the completion of the appropriate process outlined in this section, the Parties shall negotiate in good faith in an effort to resolve any remaining disputes. The Parties agree that this negotiation period will be considered exhausted if the negotiations have reached an impasse.

73. Should the Parties be unable to resolve any issues raised between them, after exhausting all of the applicable procedures set forth in this section, and subject to the limitations of Section IV, above, such issues shall be raised before a Magistrate Judge in the Southern District of Texas upon which all parties agree and selected by Judge Randy Crane, who shall hear, mediate, and, to the fullest extent possible, obtain the agreement of both Parties to resolve the issue(s) in dispute. The Parties agree that the dispute resolution process set forth in this Section will be considered exhausted if the mediation has reached an impasse.

74. Except as identified specifically in this paragraph, the Parties agree that failure to comply with any of the deadlines in this Stipulation and Settlement Agreement does not constitute a violation of this Stipulation in the case of unforeseeable circumstances. Any party that learns that it will be unable to comply with any such deadline due to unforeseeable circumstances shall notify the other party as soon as practicable.

75. The Parties agree that the mediation process shall be conducted confidentially and no public disclosure shall be made relating to the dispute before or during the mediation process. All documents and information disclosed by either Party during the mediation process shall be governed by rule 408 of the Federal Rules of Evidence and shall not be admissible in any judicial proceeding. All statements or conclusions of the mediator shall not be admissible in any subsequent judicial proceeding.

76. The Parties specifically exempt any issues concerning the SBA List from Dispute Resolution set forth above, with the exception of the issues set forth in paragraph 53.

#### **VI. CLASS NOTICE, TERMS OF ORDER FOR NOTICE, HEARING AND FINAL JUDGMENT**

77. Class notice shall be by publication only.

78. Defendants shall bear the costs incurred in connection with notifying the class of the terms and conditions of this Stipulation.

79. Concurrently with their filing of this Stipulation, Class Counsel and Defendants' Counsel shall jointly apply to the Court for Certification of the Settlement Class and Preliminary Court Approval of the Settlement provided for in this Stipulation and entry of a Preliminary Approval Order, substantially in the form appended hereto as Exhibit D. Such Preliminary Approval Order will seek approval of a Notice to the Class (the "Notice" which is attached as Exhibit E), as

well as a finding that the following satisfies the publication requirements of Fed. R. Civ. P. 23: Within five (5) business days of the date of entry of the Preliminary Approval Order, the Department will post the Notice by:

- A. Prominently displaying the Notice in all Regional Passport Agencies and Centers;
- B. Posting the Notice as a link on the Department's website, and providing a link to a copy of this Stipulation. These links shall continue to appear on the Department's website for the duration of this Stipulation. However, following the June 1, 2010 and December 31, 2010 deadlines, they may be modified to reflect that requests for and fee-free re-adjudication are no longer accepted;
- C. Providing the Notice for distribution to Casa de Proyecto Libertad, Catholic Charities – Roman Catholic Diocese of Brownsville, La Union del Pueblos Enteros, South Texas Civil Rights Project, South Texas Immigration Council, and Texas Rio Grande Legal Aid;
- D. Transmitting the Notice to each Post Office and acceptance facility that accepts passport applications in Texas. The Department will ask (but cannot require) that each Post Office and other

acceptance facility prominently display the Notice for at least six (6) weeks;

80. The Notice shall be in English and Spanish.

81. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the Parties shall request that the Court enter Final Judgment substantially in the form appended hereto as Exhibit F.

82. Within twenty-one (21) days of the Effective Date, Defendants will publish a Notice of Final Settlement Agreement employing the same methods set forth in paragraph 79 (B) and (C). The language of the Notice of Final Settlement Agreement will be agreed upon by the Parties and will constitute an updated Notice to the Class.

## **VII. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

83. The Effective Date of this Stipulation shall be the date when all of the following shall have occurred: (a) entry of the Preliminary Approval Order in all material respects in the form appended hereto as Exhibit D; (b) final approval by the Court of this Stipulation, following notice to the Class and a hearing, if required and as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and (c) entry by the Court of Final Judgment, in all material respects in the form appended hereto as Exhibit F. Following entry of the Final Judgment, the Parties agree to and the Court shall then dismiss the Settled Claims with prejudice.

84. In the event that the District Court's approval of the Stipulation or the Final Judgment referenced is voided on appeal, vacated, or terminated, the Parties' good faith adherence to the terms of this Stipulation prior to said voidance, vacation or termination shall not be considered unlawful.

85. Defendants' Counsel or Class Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of (a) the District Court's declining to enter the Preliminary Approval Order or modifying that Preliminary Approval Order in any material respect; (b) the District Court's declining to approve the Settlement embodied in this Stipulation or any material part of it; (c) the District Court's declining to enter the Final Judgment or modifying the Final Judgment in any material respect; (d) the Court of Appeals or the United States Supreme Court's modifying, reversing, or vacating in any material respect the Final Judgment; or (e) the District Court's, the Court of Appeal's, or the United States Supreme Court's modifying, reversing, or vacating and entering an Alternative Judgment in any material respect.

86. Except as otherwise provided herein, in the event the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to this Stipulation shall be deemed to have

reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Stipulation; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. In the event the Settlement is terminated or modified in any material respect, the Defendants shall be deemed not to have waived, modified, or be estopped from asserting any additional defenses available to them.

### **VIII. TERMINATION OF OBLIGATIONS**

87. The obligations of this Stipulation shall terminate after two (2) years and eleven (11) months from the Effective Date without further action by the Court. However all applications covered by this Agreement must be submitted by the termination date of this Agreement, and thus shall be treated under this Agreement and be resolved in accordance with the terms of this Agreement.

### **IX. NO ADMISSION OF WRONGDOING**

88. This Stipulation, whether or not executed, and any proceedings taken pursuant to it:

a. Shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Class Members, consistent with the Constitution, laws of the United States, and applicable regulations;

b. Shall not be offered or received against the Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and

c. Shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the Parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

## X. ATTORNEYS' FEES

89. Defendants agree to pay \$150,000.00 in attorney fees and costs as part of the settlement within sixty (60) days of the Effective Date of the Stipulation. The payment of \$150,000.00 shall be made to Hogan & Hartson and

will fully satisfy any and all claims for attorney fees and costs in this Action. Plaintiffs agree and shall not seek nor be permitted any additional fees and costs under the Equal Access to Justice Act or otherwise.

## **XI. ADDITIONAL PROVISIONS**

90. This Stipulation, and the obligations incurred herein, shall be in full and final disposition of the Action with prejudice, including any and all Settled Claims against Defendants. On the Effective Date, Plaintiffs, including Class Members, shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Defendants of and from any and all Settled Claims, subject to the provisions of Section V.

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

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

93. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation. Failure by a Party to seek enforcement of any provision of the Agreement shall not be construed as a waiver of the Party's right to enforce the Agreement.

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

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

96. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assignees of the Parties hereto.

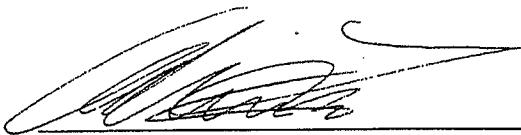
97. If any provision of this Stipulation is declared void or unenforceable by any court of competent jurisdiction, for any reason, the remainder of the Agreement shall remain in full force and effect.

98. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized by the Parties that this Stipulation is the result of arm's length negotiations between the Parties and that all Parties have contributed substantially and materially to the preparation of this Stipulation.

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

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

FOR THE PLAINTIFFS:  
DATED: June 5, 2009



Adam K. Levin  
Thomas J. Widor  
Melissa N. Henke  
David J. Weiner  
Hogan & Hartson LLP  
555 13th Street, NW  
Washington, DC 20004

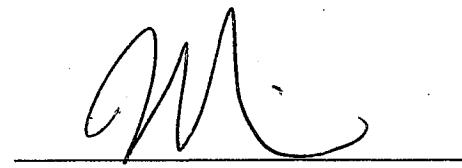
Lisa S. Brodyaga  
Refugio del Rio Grande, Inc.  
17891 Landrum Park Road  
San Benito, TX 78586

Vanita Gupta  
American Civil Liberties Union Foundation  
Racial Justice Program  
125 Broad Street  
New York, NY 10004

Lisa Graybill  
American Civil Liberties Union Foundation of Texas  
P.O. Box 12905  
Austin, TX 78711

*Attorneys for Plaintiffs*

FOR THE DEFENDANTS:  
DATED: June 24 2009



Jonathan Rolbin  
Trial Attorney  
U.S. Department of Justice, Civil Division  
Office of Immigration Litigation  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044

*Attorneys for Defendants*