Exhibit 1

AGREEMENT REGARDING PROCEDURES FOR NOTIFYING AND REOPENING CASES OF *FRANCO* CLASS MEMBERS WHO HAVE RECEIVED FINAL ORDERS OF REMOVAL

This Agreement is entered into by all Plaintiffs and all Defendants in this class action lawsuit (collectively, "the Parties"). Plaintiffs are individuals who are, or were during the relevant period, detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") in Arizona, California, or Washington, who have serious mental disorders, and who lack or lacked counsel in their immigration proceedings. Defendants are Eric H. Holder, United States Attorney General, Juan Osuna, Director of the Executive Office for Immigration Review ("EOIR"), Jeh Johnson, Secretary of Homeland Security, Thomas S. Winkowski, Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and David Jennings, Field Office Director for the Los Angeles District of ICE.

RECITALS

WHEREAS, on March 26, 2010, Plaintiff Jose Antonio Franco-Gonzalez filed a petition for writ of habeas corpus in the United States District Court for the Central District of California, *Franco-Gonzalez, et al. v. Holder, et al.*, 10-CV-02211-DMG (DTBx) (C.D. Cal.), alleging violations of the Immigration and Nationality Act, Section 504 of the Rehabilitation Act, and the Fifth Amendment to the U.S. Constitution;

WHEREAS, on November 2, 2010, Plaintiffs filed a first amended class action complaint, alleging that Defendants unlawfully require individuals detained for immigration proceedings in California, Arizona, and Washington, who are incompetent by reason of their mental disabilities, to represent themselves in their

immigration proceedings, in violation of the Immigration and Nationality Act, Section 504 of the Rehabilitation Act, and the Fifth Amendment to the U.S. Constitution;

WHEREAS, on November 21, 2011, the Court granted Plaintiffs' motion for class certification and certified the Main Class and two Sub-Classes in this case, Dkt. 348, which are described as follows:

> *Plaintiff (or "Main") Class:* All individuals who are or will be in DHS custody for immigration proceedings in California, Arizona, and Washington who have been identified by or to medical personnel, DHS, or an Immigration Judge, as having a serious mental disorder or defect that may render them incompetent to represent themselves in immigration proceedings, and who presently lack counsel in their immigration proceedings.
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> *Sub-Class 1:* Individuals in the above-named Plaintiff Class who have a serious mental disorder or defect that renders them incompetent to represent themselves in immigration proceedings.
>
> *Sub-Class 2:* Individuals in the above-named Plaintiff Class who have been detained for more than six months.

Dkt. 786, Implementation Plan Order at 24;

WHEREAS, on April 23, 2013, the Court granted in part and denied in part Plaintiffs' motion for partial summary judgment, and held that:

> (1) Section 504 of the Rehabilitation Act requires Defendants to provide Qualified Representatives to represent Sub–Class One members in all aspects of their removal and detention proceedings ("Count Four"), and
>
> (2) the [Immigration and Nationality Act] requires the provision of a custody redetermination hearing for individuals in Sub–Class Two who have been

detained for a prolonged period of time greater than 180 days ("Count Eight").

Dkt. 592 at 34;

WHEREAS, on April 23, 2013, the Court entered partial judgment and a permanent injunction against Defendants, in accordance with its summary judgment order, and further ordered that:

> Defendants shall submit to the Court a plan and status report describing the steps taken to implement this Order and Judgment and future plans for implementation, including (1) identification of current and future class members and Sub–Class members, (2) provision of Qualified Representatives for Sub–Class One members, and (3) provision of timely bond hearings as required by this Order,

Dkt. 593 at 4;

WHEREAS, on December 11, 2013, the Parties stipulated to clarify that the term "serious mental disorder or defect" in the class definition referred to individuals for whom certain specified diagnostic, medical or other criteria were met, *see* Dkt. 673 at 2-3;

WHEREAS, the Parties subsequently engaged in settlement discussions to negotiate the terms of the Implementation Plan Order, including whether a remedy should be afforded to individuals identified as *Franco* Class members while they were in ICE custody, but who, while this case was pending, were ordered removed from the United States;

WHEREAS, on October 16, 2013, the Court appointed a Special Master to resolve the Parties' outstanding disputes as to the terms of the Implementation Plan Order, including their dispute as to the remedy that should be afforded to *Franco* Class members who were ordered removed from the United States while this case was pending, Dkt. 662;

WHEREAS, the Parties submitted briefing to the Special Master on this dispute, including the Parties' respective proposals as to the remedy that should be afforded to Class members who were ordered removed from the United States while this case was pending;

WHEREAS, on March 12, 2014, the Special Master issued his Report, which stated, *inter alia*, that these former Class members were entitled to a remedy under the Injunction, but recommending, in substantial part, that the Court adopt Defendants' proposal as to what remedy should be ordered, Dkt. 709 at 27-37;

WHEREAS, the parties submitted their respective objections to the Special Master's Report to the Court;

WHEREAS, Plaintiffs believe that the Class members who were ordered removed from the United States while this case was pending are entitled to a remedy under the Court's Permanent Injunction, and that the procedures set forth in the proposal they submitted to the Special Master comprise a reasonable and appropriate form of relief for the removed Class members, but, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with requesting a ruling from the Court on this matter, Plaintiffs' counsel have concluded that the Agreement provides substantial benefits to these *Franco* Class members, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and these Class members;

WHEREAS, Defendants believe that these Class members are not entitled to any remedy under the Court's Permanent Injunction, and that even assuming they are, the proposal Defendants submitted to the Special Master is a reasonable and appropriate one, but Defendants also have taken into account the uncertainty, risk, delay and costs inherent in litigation and agreed to enter into the Agreement to avoid any further litigation expenses and inconvenience, and to remove the distraction of burdensome and protracted litigation;

NOW, THEREFORE, in full settlement of the Parties' dispute as to the proper remedy that should be afforded to individuals identified as *Franco* Class members, and who were subsequently ordered removed, the Reopening Settlement Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and the Parties agree that:

(a) upon approval of the Court after the hearing(s) provided for in the Reopening Settlement Agreement, the claims of the Removal Order Class Members, as defined in Section I.B, *infra*, to relief under the Permanent Injunction shall be settled and compromised as between Plaintiffs and Defendants; and

(b) upon Court approval of the Agreement, the [Proposed] Order Approving Settlement, substantially in the form attached as Exhibit A hereto, shall be entered dismissing the claims of the Removal Order Class Members in this case, all on the following terms and conditions:

TERMS

I. Definitions. For purposes of this Agreement, these terms are defined as follows:

A. "Class Members" are defined as those individuals in the Main Class, Sub-Class One and Sub-Class Two (as described in Dkt. 786, Implementation Plan Order at 24).

B. "Removal Order Class Members" are defined as individuals who:

(i) received a final order of removal during the relevant period in Section I.C or I.D, *infra*;

(ii) were identified by Plaintiffs as specified in Section VI.C-D, *infra*, by the Parties as specified in Section VI.E, *infra*, or by

Defendants on lists exchanged pursuant to the Court's order at Dkt. 360; and

(iii) meet the criteria in *either* (1) or (2) below:

(1) remained detained and unrepresented when they received orders of removal before an Immigration Judge without one of the following: (a) the safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, or (b) the procedural safeguards implemented pursuant to Defendants' Phase I Guidance, *see* Dkt. 663-4; *or*

(2) were released from detention following an Immigration Judge's determination that they were not competent to represent themselves (*i.e.*, "Released Sub-Class One Members") and remained unrepresented when they received orders of removal before an Immigration Judge.[1]

C. "Post-Injunction Removal Order Class Members" are defined as all Removal Order Class Members who had final orders of removal entered in their proceedings on or after April 23, 2013, the date of the Court's order granting partial summary judgment and a permanent injunction for Plaintiffs, Dkts. 592, 593, and before the Implementation Plan Effective Date, as defined in Section I.K, *infra*.

D. "Pre-Injunction Removal Order Class Members" are defined as Removal Order Class Members who had final orders of removal entered in their proceedings on or after November 21, 2011, but before April 23, 2013.

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[1] Pursuant to Section XVIII, *infra*, other Class Members who were released from detention prior to receiving a final order of removal in their immigration proceedings remain entitled to pursue reopening of their immigration proceedings pursuant to the regular motion to reopen procedures already available under the immigration statues and regulations.

E. "Private Agreement Removal Order Class Members" are defined as Removal Order Class Members, whether Post-Injunction or Pre-Injunction, whom the parties have agreed should be eligible for the joint motion to reopen procedures described in Section VIII, *infra*.

F. "Approval Hearing" shall mean and refer to the hearing by this Court to determine whether this Agreement should be approved in accordance with the relevant legal standards.

G. "Class Notices" shall mean and refer to the notices attached hereto at Exhibit B (the Summary Class Notice), C (the Detention Facility Summary Notice), D (the Joint Motion Notice and Instructions) and E (the Unilateral Motion Notice and Instructions).

H. "Notice Date" shall mean and refer to the date forty-five (45) days after the "Identification Deadline," as defined in Section I.L, *infra*, which is the last date by which the "Class Notices" as defined in Section I.G, *supra*, must be initially provided.

I. "Notice Program" shall refer to the notice procedures described in Section III, *infra*.

J. "Parties" are defined as the Plaintiffs and Defendants in this Action.

K. "Implementation Plan Effective Date" is defined as the date ninety (90) days after the Court enters the Implementation Plan Order in this case (absent an extension granted by the Court or agreed to by the Parties).

L. "Identification Deadline" is defined as the date ninety (90) days after the Court grants Preliminary Approval of this Agreement (absent an extension granted by the Court or agreed to by the Parties).

M. "Reopening Agreement," "Reopening Settlement Agreement," or "Agreement" are defined as this agreement, together with all of its attachments.

II. Preliminary Approval. Within three (3) court days after execution of the Reopening Agreement, the Parties shall file the Reopening Agreement with the Court to seek preliminary approval and shall jointly move the Court for entry of an order, substantially in the form of Exhibit A hereto, which by its terms shall:

A. Determine, preliminarily, that the Reopening Settlement Agreement and its terms fall within the range of reasonableness, merits possible approval, and that Notice of the Agreement should be provided to the Class Members and to the Removal Order Class Members;

B. Approve the proposed Class Notices and Notice Program;

C. Determine that there are no rights to "opt-out" of the Reopening Settlement Agreement and that the proposal would bind Class Members and Removal Order Class Members;

D. Schedule the Approval Hearing to consider the fairness, reasonableness and adequacy of the Reopening Settlement Agreement;

E. Direct the Parties or their designee(s) to cause the Class Notice to be disseminated in the manner set forth in the Notice Program on or before the Notice Date;

F. Determine that the Class Notice and the Notice Program: (i) meets the requirements of Rule 23(e)(1) and due process; (ii) is the best practicable notice under the circumstances; (iii) is reasonably calculated, under the circumstances, to apprise the Class, Sub-Classes and Removal Order Class Members of their right to object to the proposed Settlement; and (iv) is reasonable and constitutes due, adequate, and sufficient notice to all those entitled to receive notice.

G. Require any Class Member or Removal Order Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement to submit his or her objection ("Objection") to the Court in writing, via

regular mail on or before the Objection Date, with copies to counsel for the parties. Such Objection shall include a statement of his or her objection, as well as the specific reason, if any, for each objection, including any legal support the Class Member or Removal Order Class Member wishes to bring to the Court's attention and any evidence the Class Member or Removal Order Class Member wishes to introduce in support of his or her objection, and to state whether the Class Member and/or his or her counsel wishes to make an appearance at the Approval Hearing, or be barred from separately objecting;

H. Establish the following:

a. The date and time of the Approval Hearing.

b. The Notice Date: The Parties propose that the Notice Date be sixty (60) days before the Approval Hearing.

c. The Objection Date: The Parties propose that the objection date be twenty-one (21) days before the Approval Hearing.

III. Notice Program. The parties will propose to the Court that the Class Notice shall be given to the Class Members and Removal Order Class Members via the following means:

A. The publication of the Summary Class Notice shall be distributed by:

a. Defendants sending the Summary Class Notice to all Removal Order Class Members via U.S. Mail at the Removal Order Class Members' last known address (if any) associated with their removal case recorded within ICE's ENFORCE Alien Removal Module (EARM), whether inside or outside the United States;[2]

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[2] All mailed Notices shall include the Spanish translations provided by Plaintiffs and agreed to by the Parties.

b. Defendants providing the Summary Class Notice to all Legal Orientation Providers with offices in California, Arizona, and Washington;

c. Defendants posting the Summary Class Notice in a reasonably accessible location on a website controlled by Defendants;

d. Plaintiffs posting the Summary Class Notice on the websites of the ACLU Immigrants' Rights Project, ACLU of Southern California, the ACLU of San Diego and Imperial Counties, the ACLU of Arizona, Northwest Immigrant Rights Project, and Public Counsel, in accessible formats in English and Spanish;

B. The Detention Facility Summary Notice shall be posted by Defendants at all immigration detention facilities[3] in California, Arizona, and Washington, in areas prominently visible to immigration detainees, and accessible in English and Spanish;

C. The Joint Motion Notice and Instructions shall be provided by:

a. Defendants distributing the Joint Motion Notice and Instructions and accompanying request letter template via U.S Mail, as specified in Section IX, in accordance with its terms; and

b. Defendants posting the Joint Motion Notice and Instructions and accompanying request letter template on the ICE and EOIR websites in a reasonably accessible location, accessible in English and Spanish.

D. The Unilateral Motion Notice and Instructions shall be provided by:

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[3] The term "immigration detention facilities" shall mean and refer to facilities used by, contracted with, or acting on behalf of ICE to hold detainees for more than 72 hours. *See* Dkt. 786 at 1 n.1.

a. Defendants providing the Unilateral Motion Notice and Instructions and cover letter to all Pre-Injunction Removal Order Class Members via U.S. Mail to their last known address (if any) as specified in Section XI, *infra*; and

b. Defendants posting the Unilateral Motion Notice and Instructions and accompanying cover letter on the ICE and EOIR websites in a reasonably accessible location, accessible in English and Spanish.

E. Notice will be posted and distributed by the Notice Date. When sending notice via U.S. Mail to each Removal Order Class Member pursuant to the Reopening Settlement Agreement, Defendants shall send the Summary Class Notice together with either the Joint Motion Notice and Instructions or the Unilateral Motion Notice and Instructions, depending on which set of notice/instructions is applicable to the Removal Order Class Member.

F. Any notices posted on websites or in immigration detention facilities shall remain posted for no less than sixty (60) days. The Parties will advise the Court as part of the motion for Final Approval confirming that notice has been issued according to this Section.

G. The Parties will make best efforts to agree to amend the Class Notice and notice procedures as required by the Court in order to obtain Court approval and adoption of the terms of this Agreement in a final order in this case.

IV. Final Approval. Except for the Parties' duties that precede and continue through any final approval by the Court, this Agreement is subject to and conditioned upon the issuance by the Court of an order finally approving the settlement contained herein in accordance with the relevant legal standards. In the event that the Court preliminarily or finally refuses approval based upon an

objection, whether filed by a Class Member or Removal Order Class Member or raised by the Court, the Parties shall use their best efforts to address such objection in a manner designed to accomplish implementation of the Reopening Settlement Agreement.

V. Cooperation. The Parties shall use their best efforts to obtain an Approval Hearing Date set by the Court by no later than 195 days after the Court grants Preliminary Approval of the Settlement, and to proceed with the Approval Hearing on that date. The Parties acknowledge that each intends to implement the terms of the Reopening Settlement Agreement upon its execution. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use their best efforts to implement all terms and conditions of the Reopening Settlement Agreement. Nothing in this provision, however, requires either Party to waive its rights herein.

VI. Identification of Certain Removal Order Class Members.[4] On or before the Identification Deadline, the Parties will identify certain Removal Order Class Members[5] pursuant to the following provisions:

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[4] The parties agree that information and documents exchanged pursuant to this Agreement will be subject to the protective order governing this litigation, Dkt. 507.

[5] Plaintiffs will cooperate and assist in the identification of potential beneficiaries by providing Defendants with their consolidated list of individuals identified pursuant to Dkt. 360. For purposes of identifying potential beneficiaries and providing notice of the procedures contained in this Agreement, Defendants may identify and/or notify individuals irrespective of whether they ultimately qualify for relief under the Agreement (e.g., irrespective of whether they remained detained and unrepresented when they received orders of removal before an Immigration Judge or whether they received one of the following: (a) the safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, or (b) the procedural safeguards implemented pursuant to Defendants' Phase I Guidance, Dkt. 663-4).

A. Defendants shall identify all Post-Injunction Removal Order Class Members who were identified on lists provided by Defendants to Plaintiffs pursuant to Dkt. 360, who were detained at ICE Health Service Corps ("IHSC") facilities and the Adelanto Correctional Facility in Adelanto, California, and who were contemporaneously identified by or to U.S. Immigration and Customs Enforcement ("ICE") personnel as meeting the "serious mental illness" criteria, as set forth in Defendants' Guidelines, Dkt. 611.

B. Defendants shall identify all Post-Injunction Removal Order Class Members who were identified on lists provided by Defendants to Plaintiffs pursuant to Dkt. 360, who were detained at non-IHSC facilities other than the Adelanto Correctional Facility, and who were contemporaneously identified by ICE in immigration court filings as possible Class Members based on one or more of the following diagnoses:

    1. Psychosis or Psychotic Disorder;
    2. Bipolar Disorder;
    3. Schizophrenia or Schizoaffective Disorder;
    4. Major Depressive Disorder with Psychotic Features;
    5. Dementia and/or a Neurocognitive Disorder; or
    6. Intellectual Development Disorder (moderate, severe or profound).

C. Separately, Plaintiffs shall provide a list to Defendants of Post-Injunction Removal Order Class Members who were identified only on Plaintiffs' Class Member lists within fifteen (15) days after Preliminary Approval. Within forty-five (45) days of the receipt of that list, Defendants shall then identify which of those Post-Injunction Removal Order Class

Members were either contemporaneously identified by or to ICE personnel as meeting the "serious mental illness" criteria, as set forth in Defendants' Guidelines, Dkt. 611, or would have qualified, based on a review of their medical records and any other relevant evidence, as Class Members under the newly-narrowed Class definition, *see* Dkt. 690 at 1-2.

D. The Parties have also come to an agreement on the Plaintiffs' list of individuals to be included as "Private Agreement Removal Order Class Members," attached as Exhibit F hereto (filed under seal).

E. The Parties shall identify all Pre-Injunction Removal Order Class Members who were identified on lists exchanged by the Parties pursuant to Dkt. 360.

VII. Removal Order Class Members Who Qualify for Joint Motion to Reopen Procedures. The following Removal Order Class Members shall be eligible for the Joint Motion to Reopen Procedures described in Section VIII of this Agreement, *infra,* and shall benefit from the favorable exercise of discretion provisions described in that Section:

A. All Post-Injunction Removal Order Class Members whom Defendants identify pursuant to Sections VI.A-C of this Agreement, *supra*, who remained detained and unrepresented when they received orders of removal before an Immigration Judge without one of the following: (a) the safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, or (b) the procedural safeguards implemented pursuant to Defendants' Phase I Guidance, Dkt. 663-4;

B. All Released Sub-Class One Members, as defined in Section I.B.iii.2, (*i.e.*, who remained unrepresented when they received orders of removal before an Immigration Judge);

C. All Removal Order Class Members, including Pre-Injunction Removal Order Class Members, who submit evidence that they were determined to be incompetent by any administrative or judicial tribunal in the United States within the three years preceding the date they had the final order of removal entered in their proceeding; and

D. All Private Agreement Removal Order Class Members.

VIII. Joint Motion to Reopen Procedures. For all eligible Removal Order Class Members described in Section VII, *supra*, ICE agrees to favorably exercise its discretion pursuant to 8 C.F.R. §§ 1003.23(b)(4)(iv) or 1003.2(c)(3)(iii) to join and file the Removal Order Class Member's motion to reopen his or her immigration proceedings, subject to the following provisions:

A. If Defendants identify the Removal Order Class Member as inadmissible or deportable as described in 8 U.S.C. §§ 1182(a)(3) or 1227(a)(4), ICE may decline to favorably exercise its discretion to join the Removal Order Class Member's motion to reopen.

B. If Defendants determine that the Removal Order Class Member is subject to Section VIII.A, *supra*, or is ineligible because he or she received the safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, or the procedural safeguards implemented pursuant to Defendants' Phase I Guidance, Dkt. 663-4, ICE shall send a written notice to the Removal Order Class Member's last known address setting forth the basis for the declination or ineligibility. Defendants shall also send a copy of this written notice to Plaintiffs' counsel. Absent compelling reasons justifying Defendants' delay, Defendants shall send this written notice and copy within thirty (30) days of the date of receipt of the Removal Order Class Member's request for a joint motion.

C. Any Removal Order Class Member for whom ICE declines to submit a joint motion to reopen pursuant to this Section shall retain the right to file a motion to reopen before the Board of Immigration Appeals ("BIA") or the Immigration Court pursuant to the provisions of Section X, *infra*, depending on the forum in which the Removal Order Class Member's order of removal became final.

D. If ICE favorably exercises its discretion to file a joint motion to reopen pursuant to this Section, ICE shall file any such motion with either the BIA or the Immigration Court, depending on the forum in which the Removal Order Class Member's order of removal became final.

E. ICE's favorable exercise of discretion to file a joint motion to reopen pursuant to this Section shall not preclude ICE from contesting any issue of fact, law, or discretion in any reopened proceedings, including, but not limited to, the Removal Order Class Member's competency or incompetency.

IX. Notice of Joint Motion to Reopen Procedures. The parties agree to provide notice of the joint motion to reopen procedures described in Section VIII of this Agreement, *supra*, as follows:

A. By the Notice Date, Defendants shall send the Joint Motion Notice and Instructions to each Removal Order Class Member who is identified in Sections VII.A-B and VII.D, *supra*, at the Removal Order Class Member's last known address (if any) associated with their removal case recorded within ICE's EARM,[6] whether inside or outside the United States.

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[6] Defendants will provide Plaintiffs with the names, alien numbers, and referenced EARM address information (if any) for these individuals in the following format structure: Address Type; Street Line 1; Street Line 2; Street Line

B. The Joint Motion Notice and Instructions shall inform the Removal Order Class Member that he or she may request that ICE join a motion to reopen his or her proceedings before the BIA or the Immigration Court. This notice shall also describe the procedure through which the Removal Order Class Member should make such a request, and include an accompanying request template, attached as Exhibit G, that the individual should send to ICE in order to request a motion to reopen.

C. Defendants shall post the notice and request template in a reasonably accessible location on the EOIR and ICE websites, pursuant to Section III, *supra*.

X. Unilateral Motion to Reopen Procedures. Any individual who was detained and unrepresented in Arizona, California, and Washington on or after November 21, 2011 (the date the Court certified the class in this case), remained detained and unrepresented when they received an order of removal before an Immigration Judge, and received neither (a) the safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, nor (b) the procedural safeguards implemented pursuant to Defendants' Phase I Guidance, *see* Dkt. 663-4, shall have the ability to file a motion to reopen with the BIA or the Immigration Court, pursuant to the following provisions:

A. A motion to reopen filed by such an individual must demonstrate with evidence that the individual meets the newly-narrowed Main Class membership criteria set forth in Dkt. 690 at 1-2, and that the individual was not represented at the time the order of removal was entered before the Immigration Judge.

3; Apartment Number; PO Box; City; County; State Code; State; Postal Code; Country Code; Country.

B. A motion to reopen by such an individual must set forth argument or evidence showing that the individual has a plausible defense to removability and/or plausible grounds for relief.

C. ICE shall have the right to oppose a motion to reopen filed by an individual pursuant to this Section. For motions filed by Removal Order Class Members pursuant to this Section, however, ICE's opposition shall be limited to the following grounds:

    1. The Removal Order Class Member does not meet the newly-narrowed Main Class Definition, Dkt. 690 at 1-2, or did not meet such definition at the time they had their final order of removal entered in their proceedings;
    2. The Removal Order Class Member received the procedural safeguards set forth in Section III of the Court's Implementation Plan Order, Dkt. 786, or Defendants' Phase I Guidance, Dkt. 663-4;
    3. Reopening the Removal Order Class Member's proceedings would be futile because the Removal Order Class Member would remain removable and/or be ineligible for relief from removal in reopened immigration proceedings;
    4. The Removal Order Class Member is described in 8 U.S.C. §§ 1182(a)(3) or 1227(a)(4).

D. If the Immigration Court or the BIA denies a motion to reopen filed by an individual pursuant to this Section solely on the basis that the individual would remain removable and/or be ineligible for relief from removal in reopened immigration proceedings, the following provisions shall apply:

    1. Within fourteen (14) days of such denial, or as soon as practicable upon discovering the existence of such denial,

Defendants shall notify Plaintiffs' counsel of the name and identity of the individual whose motion was denied, a copy of the order denying the motion to reopen, a copy of the individual's motion, and a copy of ICE's opposition (if any) to the individual's motion to reopen.

2. Within thirty (30) days of such denial, or as soon as practicable upon obtaining the individual's A-file, Defendants shall provide Plaintiffs' counsel with a copy of relevant documents from the A-file, including any applications, decisions and related documents submitted to U.S. Citizenship and Immigration Services ("USCIS") or EOIR, of the individual whose motion was denied. Defendants retain the right to withhold or redact any confidential or privileged information in these documents. Notwithstanding this provision, Defendants will also consider reasonable requests for additional non-confidential or non-privileged records upon Plaintiffs' showing that the records are probative to the individual's defense to removability or claim for relief.

3. Within thirty (30) days of Plaintiffs' receipt of the documents in Section X.D.2, *supra*, Plaintiffs may provide Defendants' counsel with supplemental evidence or arguments demonstrating a plausible defense to removability and/or plausible grounds for relief. Within thirty (30) days of receiving Plaintiffs' argument and evidence, Defendants shall review this evidence and argument and then determine whether they (a) will enter a joint motion to reopen; or (b) choose not to enter a

joint motion to reopen, and shall inform Plaintiffs' counsel of their decision.

4. If Defendants choose not to enter a joint motion to reopen pursuant to Section X.D.3, *supra*, the Removal Order Class Member may then file one additional motion to reopen with evidence or arguments demonstrating a plausible defense to removability, or plausible grounds for relief.

5. The second motion to reopen must be filed within ninety (90) days of the date Defendants advise Plaintiffs' counsel in writing that they will not enter a joint motion to reopen. The time and numerical limitations on motions to reopen will not bar this second motion, if it complies with the 90-day deadline set forth in this subsection. *See* Section XII, *infra*.

E. If ICE does not oppose a motion to reopen filed by an individual pursuant to this Section, such declination shall not preclude ICE from contesting any issue of fact, law, or discretion in any reopened proceedings, including, but not limited to, the individual's competency or incompetency.

XI. Notice of Unilateral Motion to Reopen Procedures.[7] The parties agree to provide notice of the unilateral motion to reopen procedures described in Section X of this Agreement, *supra*, as follows:

A. By the Notice Date, Defendants shall send the Unilateral Motion Notice and Instructions to each Removal Order Class Member identified

[7] Nothing in this Agreement is intended to limit Plaintiffs' right to send a general notice, along with the Summary Class Notice, to the U.S. and foreign consular officials of any country to which a Removal Order Class Member was removed, describing the terms of this Agreement.

pursuant to Section VI who did not receive notice pursuant to Section IX (Notice of Joint Motion to Reopen Procedures), *supra*, at the Removal Order Class Member's last known address (if any) associated with their removal case recorded within ICE's EARM,[8] whether inside or outside the United States.

B. The Unilateral Motion Notice and Instructions shall inform the Removal Order Class Member that he or she may file a motion to reopen his or her proceedings before the BIA or the Immigration Court. This notice shall also describe the procedure through which the Removal Order Class Member should file such a motion, and include an accompanying cover letter, attached as Exhibit H, that the individual should send along with his or her motion to reopen.

C. Defendants shall post the notice and cover letter in a reasonably accessible location on the EOIR and ICE websites, pursuant to Section III, *supra*.

XII. Tolling of Time and Numerical Limitations. The first motion to reopen filed by a Removal Order Class Member pursuant to this Agreement that is accepted for adjudication on the merits shall not be subject to the time or numerical limitations set forth in the Immigration and Nationality Act ("INA") and its implementing regulations, with the exception of the time deadline set forth in Section XV, *infra*. Similarly, a subsequent motion to reopen that is accepted for adjudication on the merits submitted pursuant to section X.D.4-5 shall not be subject to the time or

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[8] Defendants will provide Plaintiffs with the the names, alien numbers, and referenced EARM address information (if any) for these individuals in the following format structure: Address Type; Street Line 1; Street Line 2; Street Line 3; Apartment Number; PO Box; City; County; State Code; State; Postal Code; Country Code; Country.

numerical limitations set forth in the INA and its implementing regulations. As part of this Agreement, the Court has entered an order equitably tolling the time and numerical limitations set forth in the INA and its implementing regulations for a Removal Order Class Member's first motion to reopen filed pursuant to this Agreement that is accepted for adjudication on the merits, or subsequent motion to reopen submitted pursuant to Section X.D.4-5 that is accepted for adjudication on the merits. *See* Dkt. 786 at 26.

XIII. Inapplicability of the Post-Departure Bar. The Parties agree that, in the absence of contrary law in the applicable circuit, the so-called "post-departure bar" contained in 8 C.F.R. §§ 1003.2(d) and 1003.23(b)(1) shall not prohibit an Immigration Judge or the BIA from adjudicating a Removal Order Class Member's motion to reopen on the merits, where such motion is authorized under the terms of this Agreement.

XIV. Right of Appeal. The Parties agree that any individual may appeal the denial of his or her motion to reopen filed before EOIR pursuant to this Agreement, whether joint or unilateral, to the BIA and the Court of Appeals, pursuant to the general laws or regulations that govern appeals of the orders of the BIA or Immigration Judges. Defendants may appeal an Immigration Judge's grant of any unilateral motion to reopen filed pursuant to this Agreement to the BIA, pursuant to the general laws or regulations that govern appeals of the orders of an Immigration Judge.

XV. Deadline to Request a Joint Motion or File a Unilateral Motion. Any request to ICE to join a motion to reopen and any unilateral motion to reopen filed pursuant to this Agreement must be submitted within eighteen (18) months after the date of the Approval Hearing, except for subsequent motions to reopen filed pursuant to Section X.D, *supra*.

XVI. Facilitation of Return to the United States. In all cases concerning a Removal Order Class Member who has been physically removed from the United States and whose motion to reopen is granted by the BIA or the Immigration Judge pursuant to this Agreement, ICE agrees to take reasonable steps to facilitate the Removal Order Class Member's prompt return to the United States.

A. These reasonable steps may include, but are not limited to, reviewing and processing any paperwork necessary for the individual's return; working with the Department of State, through the U.S. Embassy or Consulate, to obtain a transportation/boarding letter on the individual's behalf; and working with U.S. Customs and Border Protection to assist in the individual's physical reentry upon arrival.

B. If a Removal Order Class Member whose motion to reopen is granted by the BIA or the Immigration Judge pursuant to this Agreement is residing in a location that is more than one hundred (100) miles away by land from any port of entry in the United States, ICE agrees to pay reasonable travel expenses for the Removal Order Class Member's return to the United States, provided that the individual is not entitled to choose the time and mode of transportation, as follows:

1. Defendants agree to pay reasonable travel expenses for all Post-Injunction Removal Order Class Members and Private Agreement Removal Order Class Members whose joint motions to reopen are granted.
2. In addition to the Removal Order Class Members described in Section XVI.B.1, *supra*, Defendants agree to pay reasonable travel expenses for the first one hundred (100) additional individuals residing in a location that is more than one hundred (100) miles away by land from any port of entry in the United

States, who file motions to reopen pursuant to this Agreement, and whose motions are granted.[9]

C. The Removal Order Class Member, upon return to the United States, shall assume the immigration status, if any, he or she held prior to entry of the removal order. The Removal Order Class Member's return to the United States shall not confer either a new benefit (e.g., an individual who was present without admission or parole prior to the entry of their removal order and who is returned pursuant to the Secretary of Homeland Security's 8 U.S.C. § 1182(d)(5)(A) parole authority under this Agreement, shall not be considered to have been "paroled" for purposes of seeking adjustment of status) or a new disability that the Removal Order Class Member did not possess prior to the date he or she received a final order of removal, with the exception of the conditions set forth in Part XVI.D, *infra*.

D. Defendants shall retain the right to make a custody determination upon a Removal Order Class Member's return to the United States pursuant to this Agreement, and, if deemed necessary or compelled by law, to detain the Removal Order Class Member upon return.

1. Any such custody determination and/or detention must comply with applicable laws and regulations. The Removal Order Class Member shall retain the right to request a new custody determination, seek a bond hearing or release from detention, or

[9] It is anticipated that there will be less than one hundred (100) individuals in the group described in Section XVI.B.2, *supra*. However, Defendants agree to consider, on a case-by-case basis, paying reasonable travel expenses for any other individuals whose motions to reopen are granted pursuant to this Agreement.

challenge the conditions of his or her detention, as any applicable laws or regulations allow.

2. If a Removal Order Class Member was detained prior to entry of a final order of removal and departing from the United States, and is detained upon his or her return to the United States pursuant to this Agreement, then ICE shall not consider the Removal Order Class Member's previous removal and departure to constitute a break in custody for the purposes of opposing a request for a bond redetermination hearing before an Immigration Judge.

3. If a Removal Order Class Member is not detained upon his or her return to the United States pursuant to this Agreement, and fails to appear at a scheduled hearing for an unexcused reason or no reason, he or she shall not be ordered removed in absentia in the reopened proceedings, unless or until (1) he or she is represented in his or her immigration proceedings or (2) he or she has been determined mentally competent by the Immigration judge prior to the failure to appear. If such Removal Order Class Member fails to appear at a scheduled hearing for an unexecused reason or no reason, he or she may be re-detained by ICE and, for purposes of any subsequent bond hearings, the failure to appear shall constitute clear and convincing evidence that the individual is a flight risk.

XVII. Enforceability and Mediation of Disputes. The Parties shall submit this Agreement to the Court for its approval. The Court shall retain jurisdiction to enforce the terms of this Agreement, and shall have the authority to order specific

performance of the terms of this Agreement upon a showing of breach by either side, subject to the procedures set forth below.

A. Except as described below in the case of an exigent circumstance, if either Party alleges that the other Party has failed to comply with the terms of this Agreement, the allegedly aggrieved Party shall make such allegations in writing and submit such allegations to the other Party, who shall have twenty-one (21) days to respond after the date the written allegations are received. No later than twenty-one (21) days after receipt of this response, the Parties shall then meet and confer in good faith in an attempt to resolve the dispute.

B. If the Parties are unable to resolve the dispute via a meet-and-confer pursuant to Section XVII.A, *supra*, the allegedly aggrieved Party may file a motion for compliance with the Court.

C. Notwithstanding the foregoing, if a violation of this Agreement will likely result in imminent and irreparable harm to a Removal Order Class Member ("Exigent Violation"), Plaintiffs must provide a Notice of Non-Compliance that identifies the exigency and the Exigent Violation.[10] Notwithstanding the time periods set forth above, Defendants shall endeavor to respond to a Notice of Exigent Violation within 72 hours, except if exigent circumstances require a shorter response. If the Parties are unable to resolve the dispute taking into account a time frame that

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[10] Exigent Violations include violations that, due to their urgency, cannot effectively be remedied on the ordinary timetable for resolution of disputes set forth in Sections XVII.A-B. Examples of Exigent Violations include: a Removal Order Class Member with a final order who faces the imminent threat of physical deportation from the United States, as a result of Defendants' breach of this Agreement; and a Removal Order Class Member who has established an entitlement to return to the United States under this Agreement, and who is at imminent risk of harm, but whose return to the United States Defendants have not reasonably facilitated pursuant to this Agreement.

considers the relevant exigency, Plaintiffs' counsel may file an emergency motion before the Court to compel specific performance to remedy only the Exigent Violation without initiating any meet and confer process pursuant to the preceding subsections.

XVIII. Nondisplacement of Regular Motion to Reopen Procedures.

Defendants agree that the procedures for reopening cases set forth in this Agreement are separate and apart from the regular motion to reopen procedures already available under the immigration statues and regulations. The procedures established by the Reopening Settlement Agreement are not intended to limit or otherwise replace a Removal Order Class Member's right to seek any other form of relief, including but not limited to a motion to reopen filed pursuant to the immigration statues and regulations, or a request that ICE join a motion to reopen the Removal Order Class Member's proceedings.

Dated: 2/23/15

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2/24/15

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