

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

YI DONG, *et al.*,

Plaintiffs,

v.

TAE D. JOHNSON, *et al.*,

Defendants.

HON. ESTHER SALAS, U.S.D.J.

HON. JESSICA S. ALLEN, U.S.M.J.

Civil Action No.: 17-2092-ES-JSA

**PROPOSED SETTLEMENT
AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by Plaintiffs YI DONG, XIAN FENG, YIQI HUANG, SHAOFU LI, KAUSHALKUMAR PATEL, HIRENKUMAR PATEL, and QING WANG (the “Named Plaintiffs”), on behalf of themselves and all Class Members (defined below) (collectively “Plaintiffs”), and Defendants TAE D. JOHNSON, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; UR MENDOZA JADDOU, in her official capacity as Director, U.S. Citizenship and Immigration Services; ALEJANDRO MAYORKAS, in his official capacity as Secretary, Department of Homeland Security; the UNITED STATES DEPARTMENT OF HOMELAND SECURITY; the UNITED STATES DEPARTMENT OF STATE; the UNITED STATES DEPARTMENT OF EDUCATION; and the UNITED STATES OF AMERICA (collectively “Defendants”). Plaintiffs and Defendants are collectively referred to as “the Parties” throughout this Agreement. The Agreement will become effective upon approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure as set forth below.

RECITALS

WHEREAS:

1. The Named Plaintiffs and the Class Members are foreign nationals who enrolled at the University of Northern New Jersey (“UNNJ”);
2. UNNJ was a fictitious university created by the U.S. Government;
3. The U.S. Government closed UNNJ on April 5, 2016, and issued notices to certain Named Plaintiffs and Class Members informing them that their Student and Exchange Visitor Information System (“SEVIS”) record and the Form I-20 issued to them by UNNJ were set to “Terminated status” and that, as a result, they no longer had valid F-1 nonimmigrant status;
4. Plaintiffs filed a putative class-action lawsuit in the United States District Court for the Eastern District of New York in November 2016, alleging that the termination of the Plaintiffs’ status violated the Fifth Amendment of the U.S. Constitution and the Administrative Procedure Act,

and that the Defendants should be equitably estopped from using Plaintiffs' enrollment in UNNJ against them in future immigration applications;

5. The Action was transferred to the United States District Court for the District of New Jersey ("the Court") in April 2017;

6. The Court dismissed the Action for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) on October 2, 2017;

7. The U.S. Court of Appeals for the Third Circuit reversed and remanded the Action for further proceedings on August 15, 2019, *see Fang v. Dir., ICE*, 935 F.3d 172 (3d Cir. 2019);

8. Plaintiffs filed a Second Amended Complaint on March 18, 2020, naming the current Named Plaintiffs and Defendants in the Action;

9. The Parties desire to draw to a close litigation of this Action, which has been pending for roughly five years.

TERMS

NOW THEREFORE in recognition that the Parties and the interests of justice are best served by concluding this Action, it is hereby stipulated and agreed by and between the Parties as follows:

I. DEFINITIONS

A. Action. The term "Action" refers to the civil action captioned *Dong v. Johnson*, No. 2:17-cv-02092-ES-JSA (D.N.J).

B. A Number. The term "A Number" means alien registration number.

C. Class Definition. The Parties hereby stipulate and agree to certification of a Class defined as follows: any noncitizen who, for any period of time, enrolled in the University of Northern New Jersey ("UNNJ").

1. The Parties recognize and agree to this Class Definition strictly for purposes of this Agreement and settlement of this Action. Should this Agreement not receive Court approval, DHS reserves the right to raise any and all defenses to a motion for class certification.

2. As used throughout the Agreement, the terms "class" and "class member" refer to and include any individual who qualifies as part of the Class Definition.

D. Defendants. The term "Defendants" includes all named Defendants in this Action, as specified above.

E. DHS. The term "DHS" means the U.S. Department of Homeland Security and all its sub-agencies and employees of such agencies, including U.S. Citizenship and Immigration Services ("USCIS"), U.S. Customs and Border Protection ("CBP"), and U.S. Immigration and Customs Enforcement ("ICE").

- F. DOE.** The term “DOE” means the U.S. Department of Education and all its sub-agencies and employees of such agencies.
- G. DOS.** The term “DOS” means the U.S. Department of State and all its sub-agencies and employees of such agencies, including all U.S. consulates and embassies abroad.
- H. Effective Date.** The term “Effective Date” refers to the date the Court grants final approval of this Agreement and final certification of a settlement class as outlined below.
- I. Immigration Benefits.** The term “Immigration Benefits” means benefits under the Immigration and Nationality Act (as amended) (“INA”), including, but not limited to, the following:
1. Transfer to a new Student and Exchange Visitor Program (“SEVP”) approved institution with a new valid Form I-20 issued by the new institution;
 2. Reinstatement to student status;
 3. Extension of nonimmigrant status;
 4. Change of nonimmigrant status;
 5. Adjustment of status;
 6. Temporary Protected Status;
 7. U or T nonimmigrant status;
 8. Waivers;
 9. Nonimmigrant or immigrant visas;
 10. Employment Authorization Documents; and
 11. Other forms of relief from removal such as cancellation of removal and voluntary departure.
- J. Named Plaintiffs.** The term “Named Plaintiffs” means the seven individuals named as plaintiffs in this Action.
- K. Parties.** The term “Parties” includes all Named Plaintiffs, class members, and Defendants.
- L. Plaintiffs.** The term “Plaintiffs” includes all Named Plaintiffs and all class members.
- M. Plaintiffs’ Counsel.** The term “Plaintiffs’ Counsel” means the attorneys representing the Named Plaintiffs in this Action:

Ira J. Kurzban

Edward F. Ramos
Elizabeth Montano
KURZBAN, KURZBAN, TETZELI & PRATT, P.A.
131 Madeira Ave
Coral Gables, FL 33134

N. UNNJ. The term “UNNJ” refers to the University of Northern New Jersey.

O. April 2016 SEVP Termination Letters. The term “April 2016 SEVP Termination Letters” refers to the letters sent by ICE to Plaintiffs in or around April 2016 which informed Plaintiffs that their SEVIS record and Form I-20 issued by UNNJ were set to “Terminated status” on account of their “fraudulent enrollment” in UNNJ and that, as a result, they no longer had valid F-1 nonimmigrant status.

P. UNNJ Enrollment. The term “UNNJ enrollment” means initial enrollment in UNNJ and any matters, actions, materials, statements, or other information arising from, relating to, made from, or obtained through that enrollment. For example, any action taken by a class member that arose out of a request, instruction, or requirement by an individual acting as a UNNJ official will be considered to be included in the definition of UNNJ enrollment. The mere fact that a matter, action, material, statement, or other information arose or was created after such UNNJ enrollment, based on the date of such subsequent matter, action, material, statement, or other information alone, is not enough to demonstrate that it was “arising from, relating to, made from, or obtained through” that enrollment.

II. TERMS OF THE AGREEMENT

A. Class Certification and Approval of the Agreement. The Parties agree to cooperate in the class-certification process and to take all reasonable steps to ensure that this Agreement is approved by the Court and becomes effective, which includes but is not limited to the following:

1. Filing a Joint Motion for Preliminary Approval and Class Certification within 30 days after execution of this Agreement, which will request that the Court grant preliminary approval of the Agreement, grant conditional certification of the settlement class as defined in paragraph I.C, direct issuance of settlement notice to class members as set forth in paragraph II.B below, and schedule a Fairness Hearing;
2. Notifying the class members of the conditionally certified class and offering the Class the opportunity to file objections to the Agreement pursuant to the procedures set forth in paragraph II.B below;
3. Appearing at a Fairness Hearing, at which the Parties will jointly request that the Court certify the settlement class and approve the Agreement as final, fair, reasonable, adequate, and binding on the Class, all Class members, all Plaintiffs, and all Defendants.

B. Notice to Class Members.

1. The Parties agree to cooperate in the class-notification process. Defendants agree to provide the information necessary to effectuate notification of class members for objection purposes. Plaintiffs' Counsel agrees to cooperate with Defendants in notifying the class members of this Agreement at Defendants' expense.
2. The Parties will jointly prepare a Notice that explains the Agreement to class members. The proposed Notice will be submitted as an exhibit to the Joint Motion for Preliminary Approval and Class Certification. The Notice will include, at a minimum, the following:
 - a. A summary of the substantive relief included in this Agreement;
 - b. The date of the Fairness Hearing with a clear statement that the date may change without further notice to the Class;
 - c. The procedure and deadline for submitting objections to the Agreement, as set forth below;
 - d. Contact information for Plaintiffs' Counsel to answer questions;
 - e. The address for Plaintiffs' Counsel's website with links to relevant documents in the case; and
 - f. Instructions on how to access the case docket via PACER or in person at the Court's locations.
3. Defendants agree to take the following steps to effectuate notice to the class:
 - a. Send the full Notice in paper form to class members as follows: (i) for class members with an application for immigration benefits currently pending with DHS, to the address on record for the pending application; (ii) for class members with no application for immigration benefits currently pending with DHS, to the last address a class member provided to DHS on Form AR-11, unless the class member has departed the United States; and (iii) if the class member is or has been in removal proceedings, the latest address of the class member on file with the Executive Office for Immigration Review ("EOIR");
 - b. Send the full Notice in paper form to the addresses on file with Defendants for the most recent legal representatives of every class member in matters before DHS, DOS, and EOIR, in compliance with statutory and regulatory confidentiality provisions;
 - c. Send the full Notice in electronic form to the email address(es) of a class member and legal representative (if any) that appear in: (i) SEVIS records or myUSCIS account records; and (ii) DOS electronic visa applications;

- d. Post the full Notice on the websites for DHS, USCIS, ICE, DOS, and DOE; and
 - e. Post an announcement on the main social media accounts of DHS, USCIS, ICE, and DOE, with a link to each agency's respective posting.
4. Plaintiffs agree to take the following steps to effectuate notice to the class:
- a. Distribute the full Notice to trade publications that represent noncitizens, including the American Immigration Lawyers Association ("AILA"), American Immigration Council ("AIC"), the National Immigration Project of the National Lawyers Guild ("NIPNLG"), Immigrants' List, and other immigration-related nonprofit organizations known to Plaintiffs' Counsel;
 - b. Post the full Notice on the website of Plaintiffs' Counsel;
 - c. Post an announcement on all social media accounts of Plaintiffs' Counsel, directing readers to the appropriate website posting; and
 - d. Send the full Notice in electronic form to all class members and legal representatives of class members known to Plaintiffs' Counsel.
5. The Notice will be translated into Chinese and Hindi, and the Notice will include an online link to these translations.

C. Rescinding the April 2016 SEVP Termination Letters. DHS agrees that, as of the Agreement's Effective Date, the April 2016 SEVP Termination Letters will be treated as rescinded, will be without continuing legal force or effect, and will not be used to take adverse action against a class member.

D. UNNJ Enrollment Not Grounds for Inadmissibility or Deportability.

- 1. Defendants agree that UNNJ enrollment is not sufficient grounds to find that a class member is
 - a. inadmissible (or has failed to establish his or her admissibility) or ineligible for an immigration benefit due to alleged fraud or willful misrepresentation under INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)); or
 - b. deportable for failing to continuously maintain lawful status under INA § 237(a)(1)(C)(i) (8 U.S.C. § 1227(a)(1)(C)(i)).
- 2. The phrase "UNNJ enrollment is not sufficient grounds" in this paragraph means that additional evidence of violations of the law or bases of ineligibility, apart from UNNJ enrollment, must be present for Defendants to make a finding of inadmissibility, deportability, or ineligibility against a class member. Such additional evidence includes, but is not limited to, evidence of the following:
 - a. affirmative material misrepresentations made to any government official about full completion of a degree program/graduation at UNNJ;

- b. written statements signed by a class member which assert that the class member attended classes at UNNJ (but not including any misrepresentations contained in documents allegedly created by UNNJ such as transcripts or attendance sheets);
 - c. material misrepresentations about employment history at any time, before or after UNNJ enrollment;
 - d. material misrepresentations about marital status or any other material biographic details or identifiers; or
 - e. evidence pertaining to a limited number of class members who engaged in broker conduct. For purposes of this Agreement, a class member engaged in “broker conduct” if, in exchange for a monetary benefit from UNNJ, the class member solicited others to enroll in UNNJ with actual knowledge that UNNJ was not and would not operate as a bona fide school and that such enrollment was or would be a violation of law.
3. Before Defendants may rely on any evidence specified in paragraph II.D.2 to deny an immigration benefit or to take any other adverse action against a class member, Defendants must provide such evidence to the class member and give the class member the opportunity to rebut such evidence.
 4. Defendants agree that misrepresentations related to UNNJ made prior to April 5, 2016, are not material if they have been or are retracted or corrected by the class member in subsequent written filings, applications, or interviews.
 5. The Parties agree that this paragraph is limited to findings of inadmissibility or deportability based on UNNJ enrollment and Defendants retain all authorities available under the INA.

E. Adjudication of Applications for Immigration Benefits filed by Class Members in Light of UNNJ Enrollment.

1. DHS agrees that it will not use UNNJ enrollment as a ground to deny any application for immigration benefits filed by class members.
2. Defendants agree that a class member’s UNNJ enrollment will not be considered as a negative or adverse factor in the discretionary analysis for any immigration benefit that, under governing statutes or regulations, requires an adjudicator to conduct a discretionary analysis and make a discretionary determination (including but not limited to adjustment, change, or extension of status applications, and applications for discretionary waivers adjudicated by DHS or DOS such as inadmissibility waivers under INA § 212(d)(3)(A) (8 U.S.C. § 1182(d)(3)(A)).
3. DHS agrees that it will not deem a class member inadmissible at a port of entry based on his or her UNNJ enrollment, subject to the provisions listed in paragraph II.D.2, for class members seeking admission at a port of entry. While

admissibility decisions will be made at the time that a class member arrives in the United States, DHS will have access to the revised subject records, as specified further in paragraph II.H, indicating that enrollment in UNNJ is not sufficient to find that an applicant is inadmissible for fraud or willful misrepresentation under INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)).

F. No Accrual of Unlawful Presence or Failure to Maintain Lawful Status.

1. Defendants agree that a class member will not be considered to have accrued unlawful presence for the period corresponding to the date of their UNNJ enrollment through the date 180 days from the Agreement's Effective Date, or 180 days from the date removal proceedings are dismissed under paragraph II.J, whichever is later.
2. Defendants agree that a class member will not be considered ineligible or barred under any provision of the INA or its governing regulations (including INA § 245(c) (8 U.S.C. § 1255(c)) or 8 C.F.R. § 248.1) from receiving an immigration benefit that requires maintenance of lawful status, or to be in lawful status at the time of filing the application, (including, but not limited to, applications for adjustment of status, change of status, or extension of status) on account of matters arising during the period specified in paragraph II.F.1.
3. A class member shall affirmatively state that he or she is a member of this class and reference the terms of this paragraph in any future applications for immigration benefits which inquire about periods of presence and/or work authorization in the United States.

G. No Effect of Prior Denials Based on UNNJ Enrollment. DHS agrees to timely adjudicate any application for immigration benefits filed by class members without consideration of or regard to the class member's UNNJ enrollment or a prior denial of immigration benefits due to the class member's UNNJ enrollment.

H. Modification of Records and Investigative Databases.

1. DHS agrees to modify existing SEVIS records to remove references to "fraud," including any findings or mentions of inadmissibility under INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)) related to UNNJ enrollment, for all class members. DHS maintains the right to insert/maintain remarks related to INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)) arising from facts unrelated to UNNJ enrollment.
2. DHS agrees to archive/modify subject record remarks in investigative databases, if any exist, to reflect that UNNJ enrollment will not be sufficient to find that a class member is (1) inadmissible for fraud or willful misrepresentation under INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)) or (2) deportable for failing to continuously maintain lawful status under INA § 237(a)(1)(C)(i) (8 U.S.C. § 1227(a)(1)(C)(i)), pursuant to paragraph II.D.1–2.
3. DHS agrees that such subject record remarks will also reflect that prior

inadmissibility/deportability findings or immigration benefit denials based on a class member's UNNJ enrollment will not operate to foreclose eligibility in subsequent adjudications, pursuant to paragraph II.G.

4. DHS agrees to place entries in investigative database(s) to alert users of the provisions of paragraph II.F.
5. Defendants agree that, if a class member has been assigned more than one A number, Defendants will archive/modify subject record remarks in records corresponding to all known A numbers associated with the class member in accordance with this subsection.
6. Plaintiffs agree that, if a class member has been assigned more than one A number, then the class member shall list all known or previously used A numbers on all future immigration-related correspondence with any government official/agency requiring the listing of an A number.
7. For class members who have been assigned A numbers due to prior enforcement or removal actions, DHS agrees to insert/modify remarks in case-management database(s) maintained by the ICE Office of the Principal Legal Advisor ("OPLA") reflecting that such individuals are members of this class action and handling of such cases must occur in accordance with this Agreement.
 - a. Such remarks will reflect that UNNJ enrollment shall not be a basis to find that a class member is (1) inadmissible for fraud or willful misrepresentation under INA § 212(a)(6)(C)(i) (8 U.S.C. § 1182(a)(6)(C)(i)) or (2) deportable for failing to continuously maintain lawful status under INA § 237(a)(1)(C)(i) (8 U.S.C. § 1227(a)(1)(C)(i)), pursuant to paragraph II.D.1–2.
 - b. Such remarks will also reflect that prior inadmissibility findings or immigration benefit denials based on an individual's UNNJ enrollment will not operate to foreclose eligibility in subsequent adjudications, pursuant to paragraph II.G.
 - c. If a class member has been assigned more than one A number, DHS will, in accordance with this paragraph, insert/modify remarks in records corresponding to all known A numbers associated with the class member in case management database(s) maintained by ICE OPLA.

I. Deadline to File Applications for Immigration Benefits for Class Members Inside the United States. Except as provided below and in paragraph II.J for class members currently or previously in removal proceedings, all class members who remain in the United States shall have 180 days from the Agreement's Effective Date to apply for immigration benefits or depart the United States.

1. The requirements in this paragraph do not apply to class members who have already acquired lawful status, or have otherwise been granted permission to remain in the United States through an adjudication by DHS.

2. For the purposes of this paragraph, “apply for immigration benefits” refers to an application for which the class member is *prima facie* eligible and, if applicable, for which a visa number is available according to the DOS Visa Bulletin at the time the application is filed, if needed. For purposes of this paragraph, “*prima facie* eligible” means that on first appearance the class member appears to meet the eligibility requirements.
 - a. For example, the filing of a Form I-130 based on a relationship to an immediate relative—as defined by INA § 201(b)(2)(A)(i) (8 U.S.C. § 1151(b)(2)(A)(i))—or a Form I-140 based on an employment-based preference category (*i.e.*, EB-1–EB 5) for which the priority date is current at the time of filing according to the DOS Visa Bulletin would qualify as “apply[ing] for immigration benefits” under this paragraph.
 - b. However, the filing of a Form I-130 based on a family-sponsored preference category (*i.e.*, F-1–F-4) or a Form I-140 based on an employment-based preference category (*i.e.*, EB-1–EB 5) for which the priority date is not current at the time of filing according to the DOS Visa Bulletin would not qualify as “apply[ing] for immigration benefits” under this paragraph.
3. For purposes of this paragraph, an application for immigration benefits pending on the Agreement’s Effective Date shall be considered filed within 180 days of the Agreement’s Effective Date.
4. If a class member does not apply for immigration benefits or depart the United States within 180 days of the Agreement’s Effective Date, DHS may place the individual in removal proceedings for any lawful reason, consistent with DHS enforcement guidelines for prioritization of noncitizens for enforcement action, if any guidelines exist, without regard to whether such guidelines differ from guidelines in effect on this Agreement’s Effective Date. In such cases, DHS’s obligations under paragraph II.J shall not apply to the applicable class member.
5. If a class member’s application for immigration benefits is denied, and that class member has exhausted any administrative appellate rights, ICE may issue a Notice to Appear (“NTA”) for any lawful reason, consistent with DHS enforcement guidelines for prioritization of noncitizens for enforcement action, if any guidelines exist, without regard to whether such guidelines differ from guidelines in effect on this Agreement’s Effective Date. In such cases, DHS shall have no further obligations to a class member under paragraph II.J.

J. Dismissal of Removal Proceedings. For class members who are currently in removal proceedings (or were previously in removal proceedings which resulted in a final order of removal) based on removal charges with a factual basis related to or arising out of UNNJ enrollment, including but not limited to being out of status, DHS agrees to move to dismiss proceedings under the conditions of this paragraph.

1. DHS’s obligations under this paragraph shall not apply in cases where the removal proceedings are or were based on removal charges with a factual basis

unrelated to and not arising out of UNNJ enrollment, and DHS reserves the right to decline to file a motion to dismiss in cases of INA violations involving issues not related to or arising out of UNNJ enrollment.

2. For purposes of this provision, “removal charges with a factual basis related to or arising out of UNNJ enrollment” include any allegation or charge that a class member failed to continuously maintain status under INA § 237(a)(1)(C)(i) (8 U.S.C. § 1227(a)(1)(C)(i)) due to their UNNJ enrollment or committed fraud or made willful material misrepresentations under INA § 212(a)(6)(C) (8 U.S.C. § 1182(a)(6)(C)(i)) due to their UNNJ enrollment.
3. For class members who are in removal proceedings on the Effective Date of this Agreement, DHS will move to dismiss the removal proceedings under 8 C.F.R. §§ 239.2(c), 1239.2(c) within 120 days of this Agreement’s Effective Date.
 - a. DHS will file such motions unless it receives a request in writing from the class member (or, if represented, the class member’s counsel) asking DHS to refrain from seeking dismissal. Such a written request should be made within 30 days of receipt of a notice advising of membership in a conditionally certified class.
4. For class members with an administratively final order of removal as of the Effective Date of this Agreement, DHS will:
 - a. Move to reopen the removal proceedings within 120 days of the Agreement’s Effective Date and, if the motion to reopen is granted,
 - b. Move to dismiss the proceedings under 8 C.F.R. §§ 239.2(c), 1239.2(c).
5. For class members who were granted voluntary departure but did not depart the United States, DHS agrees that neither INA § 240B(d)(1) (8 U.S.C. § 1229c(d)(1)) nor 8 C.F.R. § 1240.26(e)(2) shall apply to bar such class members from receiving an immigration benefit, and the provisions of this paragraph shall apply to such class members to the same extent as other class members with administratively final orders of removal under paragraph II.J.4.
6. For class members with an administratively final grant of voluntary departure that have departed the United States during the period of such a grant, the Parties agree that DHS will not file motions to reopen such grants.
7. If a DHS motion under this paragraph (including a motion to reopen or a motion to dismiss) is denied by an Immigration Judge, DHS will appeal the denial to the Board of Immigration Appeals (“BIA”) and the affected class member will file an appropriate non-opposition to the appeal.
8. If a class member’s application for immigration benefits is denied, and the class member has exhausted any administrative appellate rights, DHS may issue an NTA for any lawful reason, consistent with DHS enforcement guidelines for prioritization of noncitizens for enforcement action if any guidelines exist,

without regard to whether such guidelines differ from guidelines in effect on this Agreement's Effective Date. In such cases, DHS shall have no further obligations to a class member under paragraph II.J.

9. If removal proceedings are dismissed pursuant to a motion filed under the terms of this paragraph, the class member must depart the United States or apply for immigration benefits within 180 days of the date removal proceedings are dismissed (unless the class member has otherwise acquired lawful status, or been granted permission to remain in the United States through an adjudication by DHS).
 - a. For purposes of this paragraph, an application for immigration benefits pending when a class member's removal proceedings are dismissed shall be considered filed within 180 days of the date removal proceedings are dismissed.
 - b. If a class member fails to depart or fails to apply for immigration benefits within 180 days of dismissal, DHS may issue an NTA for any lawful reason, consistent with DHS enforcement guidelines for prioritization of noncitizens for enforcement action in effect at the time the issuance of such NTA is contemplated, if any guidelines exist, without regard to whether such guidelines differ from guidelines in effect on this Agreement's Effective Date. In such cases, DHS shall have no further obligations to a class member pursuant to this paragraph.
 - c. For the purposes of this paragraph, "apply for immigration benefits" refers to an application for which the class member is *prima facie* eligible and, if applicable, for which a visa number is available according to the Visa Bulletin at the time the application is filed, if needed. For purposes of this paragraph, "*prima facie* eligible" means that on first appearance the class member appears to meet the eligibility requirements.
 - 1) For example, the filing of a Form I-130 based on a relationship to an immediate relative—as defined by INA § 201(b)(2)(A)(i) (8 U.S.C. § 1151(b)(2)(A)(i))—or a Form I-140 based on an employment-based preference category (*i.e.*, EB-1–EB-5) for which the priority date is current at the time of filing according to the DOS Visa Bulletin would qualify as "apply[ing] for immigration benefits" under this paragraph.
 - 2) However, the filing of a Form I-130 based on a family-sponsored preference category (*i.e.*, F-1–F-4) or a Form I-140 based on an employment-based preference category (*i.e.*, EB-1–EB-5) for which the priority date is *not* current at the time of filing according to the DOS Visa Bulletin would not qualify as "apply[ing] for immigration benefits" under this paragraph.
 - d. DHS agrees that all provisions under paragraphs II.D–II.G of this Agreement shall apply to class members whose removal proceedings have been dismissed and who either apply for immigration benefits or depart the

United States.

- e. A class member may not file an appeal, on any legal or factual basis, of any order granting reopening and/or dismissal of proceedings pursuant to a motion filed under this paragraph.
10. DHS agrees to (i) expressly mention this Agreement and place an online link to this Agreement in any motions DHS files before an IJ or BIA pursuant to paragraphs II.J; and (ii) file this Agreement in cases where (a) DHS deems it necessary, or (b) the IJ or BIA requests the Agreement.
11. Plaintiffs and DHS agree that service of any filings (such as optional non-oppositions to any DHS filing), under paragraph II.J shall be made upon the ICE OPLA Newark field location regardless of a class member's present location, and DHS agrees to concede proper service of a filing served upon DHS in compliance with this paragraph.
- a. OPLA Newark will coordinate the submission of DHS filings under this paragraph.
 - b. OPLA Newark will designate one or more points of contact, and provide appropriate email address(es), for purposes of communication with class members or their attorneys with respect to the provisions of this paragraph.
 - 1) Plaintiffs must serve court filings (such as non-oppositions under paragraph II.J.7) on OPLA Newark via existing methods: *i.e.*, via ICE eService or via mail to OPLA Newark, 970 Broad Street, Room 1300, Newark, NJ 07102. See <https://www.ice.gov/field-office/office-principal-legal-advisor-newark>.
 - 2) Plaintiffs must serve written opt-out requests asking DHS to refrain from seeking dismissal of removal proceedings under paragraph II.J.3.a. via email to the OPLA Newark (Elizabeth) Duty Attorney at OPLA-Elizabeth-DutyAttorney@ice.dhs.gov, and must include in the subject line the following language: "DONG SETTLEMENT MTD OPT-OUT."
 - 3) If a class member submits a written request that requires a response, DHS will designate an individual for that specific inquiry and that individual will respond accordingly to the class member in accordance with this paragraph.
 - c. DHS and Plaintiffs' Counsel may confer and adjust the procedure described in this sub-paragraph, as needed, with a written agreement.
12. DHS is not responsible for decisions issued by an individual immigration judge or the BIA in a particular case, or for any delays in adjudication of motions by the immigration court or BIA.

- a. DHS's obligations under this paragraph are strictly limited to taking appropriate positions before the immigration court and/or BIA consistent with this Agreement and filing motions or appeals before the immigration court or BIA as described above.
 - b. Plaintiffs agree to raise and resolve any disputes about timeliness of immigration court or BIA adjudications directly with the applicable immigration court or the BIA.
13. Following a grant of dismissal, relief, or protection from removal by an immigration judge or the BIA, DHS shall have no further obligations to a class member in removal proceedings under paragraph II.J. However, the Parties agree that DHS will still be bound by its other obligations to class members under this Agreement, including regarding applications for immigration benefits filed outside of removal proceedings pursuant to paragraphs II.D–II.G.
14. This Agreement does not affect DHS's ability to place class members into removal proceedings at any time for reasons unrelated to UNNJ enrollment, such as for criminal removal grounds or for student-status violations arising in connection with subsequent enrollment at another educational institution that is unrelated to UNNJ.

K. Applications for Reinstatement of Student Status. DHS agrees to adjudicate and, to the extent possible, grant all reinstatement applications by class members who remain in the United States if such applications are pending on the Agreement's Effective Date or filed within 180 days of the Agreement's Effective Date, without regard to the standard five-month filing window, a class member's previous lack of status, or a prior denial of a previously filed reinstatement application.

- 1. If USCIS intends to deny a reinstatement application, USCIS will issue a notice of intent to deny ("NOID") and provide the affected class member with an opportunity to address the evidence against them.
- 2. DHS agrees that UNNJ enrollment will not be a reason for the denial of any reinstatement application, and the requirements of 8 C.F.R. §§ 214.2(f)(16)(i)(A) and (F) will be deemed satisfied.
- 3. Plaintiffs and DHS agree that the other requirements for reinstatement, including submission of a new Form I-20 from a new educational institution, will apply.
- 4. DHS agrees to create internal guidance and to consult with ICE OPLA as needed to alleviate any issues that may arise in issuing valid Forms I-20.
- 5. As reinstatements are discretionary, any misconduct or violations of a class member before or after UNNJ enrollment (but not including UNNJ enrollment) may be weighed in the exercise of discretion on a case-by-case basis.

L. Timing of Adjudications Under this Agreement.

1. DHS will take an initial adjudicative action within 120 days of the submission of an application for immigration benefits (or within 120 days of the Agreement's Effective Date if the application is pending initial adjudicative action on the Agreement's Effective Date).
2. DHS will take a subsequent adjudicative action within 90 days of the receipt of the response to any Request for Evidence ("RFE") or NOID.
3. DHS is not obligated to take an adjudicative action while the response period for any RFE or NOID remains pending and the class member has not submitted the required response(s).
4. This paragraph will not apply to applications for asylum filed with USCIS.

M. Termination of Certain Obligations.

1. Following the adjudication of the first application for immigration benefits filed by a class member pursuant to paragraph II.I or II.J.9, DHS's obligations under paragraphs II.K and II.L shall be complete and shall not apply to any future application for immigration benefits filed by that class member.
2. However, DHS agrees that its obligations under the remaining paragraphs of this Agreement (including those in paragraphs II.D–II.G) shall apply to all future applications for immigration benefits filed by class members.

N. Dismissal of Action. Plaintiffs agree to dismiss this Action against all Defendants with prejudice within 30 days of this Agreement's Effective Date.

O. Retention of Jurisdiction and Dispute Resolution.

1. The Parties stipulate that the Court retains ultimate jurisdiction to enforce this Agreement, subject to the sunset provisions located throughout this Agreement, and will file a stipulation and proposed order to that effect.
2. The Parties agree to submit any unresolved disputes to the mediation procedures in paragraphs II.O.3–4 prior to filing of any motions with the Court related to a post-settlement dispute. Should any dispute remain unresolved after completion of the mediation procedures set forth below, a class member may apply to the Court for enforcement of the Agreement only through Plaintiffs' Counsel. Defendants may apply to the Court for enforcement of the Agreement if efforts to resolve disputes with Plaintiffs' Counsel are unsuccessful.
3. For any disputes related to alleged DHS noncompliance,
 - a. DHS agrees to designate a point of contact ("DHS POC") for dispute-resolution purposes. Contact information for the DHS POC will be provided in the Notice issued to class members under paragraph II.B. The Notice will advise class members that no request for dispute resolution may be submitted to DHS prior to the Effective Date.

- b. If a class member believes that DHS Defendants have not materially complied with this Agreement on a matter relating to DHS, such class member shall submit a written request to the DHS POC outlining the reasons for the alleged noncompliance.
 - c. The DHS POC will coordinate with the relevant DHS components or programs to resolve the issue.
 - d. Such DHS POC shall provide a written response via email to the class member or, if represented, his or her counsel, within 30 days if the individual is not detained by DHS or facing imminent removal from the United States. If the individual is detained by DHS or facing imminent removal from the United States, DHS POC shall provide a written response via email or personal service to the class member or, if represented, his or her counsel, within 15 days.
 - e. In no case will an individual be removed from the United States by ICE prior to ICE OPLA's review and resolution of any claimed non-compliance with this Agreement.
4. For any disputes related to alleged DOS noncompliance,
- a. DOS designates its LegalNet (LegalNet@state.gov) as the point of contact ("DOS POC") for dispute-resolution purposes. Contact information for the DOS POC will be provided in the Notice issued to class members under paragraph II.B. The Notice will advise class members that no request for dispute resolution may be submitted to DOS prior to the Effective Date.
 - b. If a class member believes that DOS Defendants have not materially complied with this Agreement on a matter relating to DOS, such class member shall submit a written request to the DOS POC outlining the reasons for the alleged noncompliance.
 - c. The DOS POC will coordinate with the relevant DOS components or programs to resolve the issue.
 - d. Such DOS POC shall provide a written response via email to the class member or, if represented, his or her counsel within 60 days.
5. If a claim of class membership for any putative class member is disputed by the Parties, the party seeking to prove class membership shall provide Defendants with evidence of enrollment in UNNJ.

P. Reporting Requirements. Defendants agree to submit reports to Plaintiffs' Counsel setting forth the progress of implementing this Agreement.

- 1. Defendants shall submit reports to Plaintiffs' Counsel every 60 days for the first 180 days following the Agreement's Effective Date and every 90 days thereafter, subject to the provisions below. Such reports shall include the following

information:

- a. A list of all motions to reopen and/or dismiss that have been filed pursuant to paragraph II.J., including the name and A Number of each class member;
 - b. A list of all timely opt-out requests filed pursuant to paragraph II.J.3.a, including the name and A Number of each class member;
 - c. A list of all applications for immigration benefits filed pursuant to paragraphs II.I and II.J.9, including, if statutory and regulatory confidentiality provisions permit, the type of immigration benefit sought, the name and A Number of each class member, the status of each application, the final disposition of each application that has been adjudicated, and, if applicable, the status/disposition of any appeal; and
 - d. A list of all written requests submitted to the DHS POC or DOS POC for dispute resolution pursuant to paragraphs II.O.3 and II.O.4, including, if statutory and regulatory confidentiality provisions permit, the name and A Number of each class member, the status of each request, and the final disposition of each request that has been completed.
2. Defendants' reporting obligations under this paragraph shall terminate when all applications filed under paragraphs II.I and II.J.9 have been fully adjudicated, or two years after the Effective Date, whichever is sooner.

Q. Attorneys' Fees and Costs.

1. The Parties stipulate that Plaintiffs will receive fees and costs under the Equal Access to Justice Act ("EAJA") in an amount equaling \$450,000.00.
 - a. Plaintiffs agree that they may not seek any fees or costs in excess of that amount, except for any fees or costs associated with post-settlement enforcement of this Agreement.
 - b. Plaintiffs agree that additional fees or costs will not accrue after the Effective Date of this Agreement, except for any fees or costs associated with post-settlement enforcement of this Agreement.
2. By executing this Agreement, Defendants do not admit that Plaintiffs' EAJA claim is meritorious or that Defendants were not substantially justified, in law or fact, in the litigation position advanced throughout the pendency of this action before the U.S. District Court and the appeal to the U.S. Court of Appeals for the Third Circuit.
3. If this Agreement is executed by the Parties and approved by the Court, no Named Plaintiff or class member shall be entitled to recover any costs or fees except for post-settlement enforcement of this Agreement as provided in this paragraph, and the Named Plaintiffs/class representatives agree that they will not

file a motion for EAJA fees.

4. Pursuant to the Named Plaintiffs' independently executed Assignments of Fees in favor of Plaintiffs' Counsel—which assign all attorneys' fees to Plaintiffs' Counsel and have been provided to Defendants—the Parties agree that Defendants shall remit payment in full satisfaction of any and all claims for attorney's fees in this matter by disbursement to Plaintiffs' Counsel.
 - a. Payment under this paragraph will be made to Kurzban, Kurzban, Tetzeli and Pratt, Trust Account.
 - b. Payment under this paragraph will be made no later than 60 days after the Agreement's Effective Date and in accordance with Defendants' disbursement practices.
 - c. On or before the date that this Agreement is executed, Plaintiffs' Counsel shall provide to Defendants' Counsel all information necessary to effectuate this payment by electronic funds transfer.
 - d. In the event of any disputes related to this paragraph, the Parties agree to participate in mediation to resolve the dispute.

R. Release of Claims and Preservation of Defenses.

1. The Plaintiffs (including Named Plaintiffs and all class members) agree that Defendants shall be released from the Released Equitable Claims and Released Money Damages Claims pursuant to the terms and provisions of this Agreement and have agreed to the dismissal with prejudice of this Action and all Released Equitable Claims and Released Money Damages Claims.
 - a. The term “Released Equitable Claims” includes all claims, demands, rights, liabilities and causes of action for declaratory or equitable relief, including injunctive relief, known or unknown, that: (1) relate to UNNJ enrollment; and (2) existed prior to the Effective Date of this Agreement, and which were or could have been alleged in the action based on the same common nucleus of operative facts alleged and the arguments made by the named Plaintiffs in the Action.
 - b. The term “Released Money Damages Claims” includes all claims, demands, rights, liabilities and causes of action for money damages (including claims filed under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and/or under the Federal Tort Claims Act, as well as claims for punitive damages), known or unknown, that: (1) relate to UNNJ enrollment; and (2) existed prior to the Effective Date of this Agreement, and which were or could have been alleged in an action based on the same common nucleus of operative facts alleged by the named Plaintiffs in the Action.
 - c. The term “Released Parties” means Defendants in their official capacities,

as well as their past, present, or future department heads, inferior officers, employees, agents, representatives, or contractors.

2. Upon final approval of this Agreement by the Court, the Plaintiffs (including Named Plaintiffs and class members) agree to waive and release all Released Parties from the Released Equitable Claims and Released Money Damages Claims.
3. Defendants agree that nothing in this Agreement shall have any preclusive effect on any claim by Plaintiffs (including Named Plaintiffs or any class member) concerning any individualized challenges to their custody or denial/revocation of immigration benefits.
4. Plaintiffs agree that, by agreeing to this Agreement and the releases contained herein, Defendants do not waive any defenses available to any Defendant in any other pending or future action to claims that were or could have been made in the Action that arise from the same common nucleus of operative facts alleged by the Named Plaintiffs in their pleadings and the arguments made in the Action.

S. Miscellaneous Provisions.

1. **No Acknowledgement of Wrongdoing.** The Parties enter into this Agreement for the sole purpose of settling and disposing of this Action. This Agreement does not constitute an admission of guilt, liability, or wrongdoing by any of the Parties.
2. **No Precedential Value.** This Agreement shall be without precedential value or effect.
3. **Entire Agreement.** This Agreement, including all Exhibit(s), constitutes the entire agreement between the parties with respect to this Action and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties in connection with this Agreement. Further, each party is precluded from using this Agreement for any purpose other than enforcement of the terms of this Agreement as stated herein.
4. **No Modification.** No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendants and approved by the Court.
5. **Applicable Law.** This Agreement shall be interpreted in accordance with the laws of the United States of America without respect to the law of any particular State or territory.
6. **Computation of Time.** Computation of time or periods of time referenced in any document related to this Agreement shall be computed pursuant to Federal Rule of Civil Procedure 6.
7. **Authority to Bind.** The undersigned executing this Settlement Agreement

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 under the Agreement to effectuate its terms.

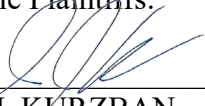
8. **Cooperation of Counsel.** Class Counsel and Defendants' Counsel agree to cooperate fully with another in seeking Court approval of this Settlement Agreement and promptly agree upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the settlement.
9. **Headings.** The Parties agree that the paragraph headings in this Agreement are included solely for the convenience of the Parties, are not part of the terms and conditions of the Agreement, and do not limit, alter, or otherwise affect the provisions of, and the Parties' rights and obligations under, this Agreement.
10. **Interpretation.** The language of this Agreement will be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. This Agreement is the product of negotiations and joint drafting so that any ambiguity will not be construed against any Party. If any provision or provisions of this Agreement are found to be contrary to law, the Parties agree that the remaining provisions will not be affected and will remain in full force and effect.
11. **Severability.** If any provision of this settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement shall continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt in good faith to renegotiate the provision of this Settlement that was declared invalid, void or unenforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement, and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective Parties.

Consented and agreed to by:

Dated: November 22, 2021

For the Plaintiffs:



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By:



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Assistant U.S. Attorney
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ALEX SILAGI
Assistant U.S. Attorney