

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 MARIA SANTILLAN, et al.,

6 Plaintiffs,

7 vs.

8 ALBERTO R. GONZALES, Attorney
9 General of the United States; MICHAEL
10 CHERTOFF, Secretary of Homeland
11 Security; THE UNITED STATES
12 CITIZENSHIP AND IMMIGRATION
13 SERVICES; EMILIO GONZALEZ, USCIS
14 Director; DAVID STILL, USCIS San
15 Francisco District Director,

16 Defendants.

Case No. C 04-2686-MHP

**STIPULATION AND AGREEMENT
OF SETTLEMENT AND RELEASE**

15 Plaintiffs in the above-captioned matter, on behalf of themselves, the Class and all Class
16 Members (as defined below), and Defendants Alberto Gonzales, Attorney General; Michael
17 Chertoff, Secretary of Homeland Security; United States Citizenship and Immigration Services
18 ("USCIS"); Emilio Gonzalez, Director of USCIS, and David Still, District Director, USCIS San
19 Francisco District (together, "Defendants"), by and through their attorneys, hereby enter into this
20 Stipulation and Agreement of Settlement, and Release (the "Stipulation"), as of the date beneath
21 Defendants' counsel's signature, subject to the approval of the Court pursuant to Rule 23 of the
22 Federal Rules of Civil Procedure.

23 WHEREAS:

24 (A) Plaintiffs, Maria Santillan, Flora Rodriguez Santillan, Jaime Rodriguez Santillan
25 and others filed suit on behalf of themselves and all others similarly situated against Defendants,
26 the Attorney General of the United States, the Secretary for the Department of Homeland
27 Security, the United States Citizenship and Immigration Services ("USCIS"); the Director of the
28 USCIS, and the San Francisco USCIS District Director in the U.S. District Court for the Northern

1 District of California on July 6, 2004, seeking class certification and declaratory and injunctive
2 relief;

3 (B) By Order of October 12, 2004, the Court (1) certified the class consisting of "all
4 persons who were or will be granted lawful permanent resident status by the [Department of
5 Justice's Executive Office for Immigration Review (EOIR)], through the Immigration Courts or
6 the Board of Immigration Appeals [(BIA)] of the United States, and to whom USCIS has failed to
7 issue evidence of registration as a lawful permanent resident, with the exception that the class
8 excludes the 34 named plaintiffs in *Lopez-Amor v. U.S. Attorney General*, No. 04-CV-21685 (S.D.
9 Fla.) and the plaintiff class in *Padilla v. Ridge*, No. M 03-126 (S.D. Tex.);" (2) named Maria
10 Santillan, Flora Rodriguez Santillan, and Jamie Rodriguez Santillan as class representatives; and
11 (3) named counsel of named plaintiffs as counsel for the class;

12 (C) By Order of August 24, 2005, the Court subdivided the class into a "pre-April 1
13 subclass" of persons who were or will be granted lawful permanent resident status by the EOIR
14 under regulations in effect prior to April 1, 2005 through the Immigration Courts or the BIA, and
15 to whom USCIS has failed to issue evidence of registration as a lawful permanent resident, with
16 the exception that the class excludes the 34 named plaintiffs in *Lopez-Amor v. U.S. Attorney*
17 *General*, No. 04-CV-21685 (S.D. Fla.) and the plaintiff class in *Padilla v. Ridge*, No. M 03-126
18 (S.D. Tex.), and a "post-April 1 subclass," who were or will be granted lawful permanent resident
19 status by the EOIR under regulations in effect on April 1, 2005 or thereafter;

20 (D) In the same Order of August 24, 2005, the Court granted Plaintiffs' Motion for
21 Summary Judgment Declaring Violations of the Administrative Procedure Act;

22 (E) By Order of December 22, 2005, the Court issued a Permanent Injunction;

23 (F) Defendants filed a Notice of Appeal to the Ninth Circuit; on February 16, 2006.

24 (G) One of Plaintiffs' counsel, Mr. Javier Maldonado on behalf of the Lawyers'
25 Committee for Civil Rights Under the Laws of Texas, represents the plaintiff class in *Padilla v.*
26 *Ridge*, No. M 03-126 (S.D. Tex.);

27 (H) Defendants deny all liability with respect to the Action, deny that they have
28 engaged in any wrongdoing, deny the allegations in the Complaint filed in the Action, deny that

1 they committed any violation of law, deny that they acted improperly in any way, and deny
2 liability of any kind to the Plaintiffs, the Class, or the Class Members, but have agreed to the
3 settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial
4 expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and
5 terminate the Action and any and all Settled Claims (*see below* Section I: "Definitions");

6 (I) Class Counsel have conducted discussions and arm's length negotiations with
7 Defendants' Counsel with respect to a compromise and settlement of the Action with a view to
8 settling the issues in dispute and achieving the best relief possible consistent with the interests of
9 the Plaintiffs, the Class, and all Class Members;

10 (J) Class Counsel (1) have concluded that the terms and conditions of this Stipulation
11 are fair, reasonable, and in the best interests of the Named Plaintiffs, the Class, and all Class
12 Members; (2) have agreed that the Released Parties should be released from the Settled Claims
13 pursuant to the terms and provisions of this Stipulation; (3) and have agreed to the dismissal of
14 the Action with prejudice and to seek vacatur of the Court's permanent injunction Order of
15 December 22, 2005 (slip copy published at 2005 WL 3542661 (N.D. Cal. 2005)), after
16 considering the substantial benefits that the Plaintiffs, the Class, and all Class Members will
17 receive from settlement of the Action, the risks of litigation, and the desirability of permitting the
18 Settlement to be consummated as provided by the terms of this Stipulation;

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

25 I. Definitions:

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

27 A. "Action" means the above-captioned action pending in the United States
28 District Court for the Northern District of California (docket no. C 04-2686-MHP) and in the U.S.

1 Court of Appeals for the Ninth Circuit (docket no. 06-15366).

2 B. "Class" means, for purposes of this settlement only, a Plaintiff class
3 pursuant to Rule 23 of the Federal Rules of Civil Procedure, comprising all persons who have
4 been or will be granted lawful permanent resident status prior to termination of this Stipulation by
5 the EOIR, through the Immigration Courts or the BIA, and to whom the USCIS has failed to issue
6 evidence of registration as a lawful permanent resident, with the exception that the class excludes
7 the 34 named plaintiffs in *Lopez-Amor v. U.S. Attorney General*, No 04-CV-21685 (S.D. Fla.).
8 This class definition is dependent upon dismissal of the action in *Padilla, et al., v. Ridge, et al.*,
9 No. M-03-126 (S.D. Tex.), or transfer of that action to the Northern District of California. The
10 Class ceases to exist upon the termination of this Stipulation, and the Class shall not accrue any
11 additional members after such termination date. If the *Padilla* case is not dismissed or transferred
12 to this court, the parties will re-negotiate the terms of this agreement.

13 C. "Class Member" means any Person included in the Class.

14 D. "Effective Date of Settlement" or "Effective Date" means the date upon
15 which the Settlement contemplated by this Stipulation shall become effective, as set forth in
16 paragraph 33 below.

17 E. The terms "evidence of LPR status" and "documentation of LPR status"
18 mean documentation issued by DHS to an alien having lawful permanent resident status that the
19 alien may show to demonstrate his or her status for purposes of travel, employment, and other
20 activities requiring documentation of an individual's immigration status in the United States. For
21 purposes of this Stipulation, such documentation also constitutes the "evidence of registration as a
22 lawful permanent resident" in the class definition as defined above.

23 F. "Lawful Permanent Resident" ("LPR") means a lawful permanent resident
24 alien of the United States, as defined in 8 U.S.C. § 1101(a)(20).

25 G. The term "Permanent Resident Card" or "Form I-551" means the secure,
26 biometric document that is issued by DHS to LPRs as evidence of their permanent resident status.

27 H. "Plaintiff(s)" or "Named Plaintiff(s)" means Maria Santillan, Flora
28 Rodriguez Santillan, Jaime Rodriguez Santillan, Maria Camarillo, Jose Miranda, Miroslava

1 Hernandez, Pablo Hernandez Calvillo, and Rodolfo Navas;

2 I. "Plaintiffs' Counsel" or "Class Counsel" means Cooley Godward Kronish
3 LLP, the Lawyers' Committee for Civil Rights Under the Laws of Texas, and the Mexican
4 American Legal Defense and Education Fund. Should these entities change their names or merge
5 with other entities, those new entities shall also qualify as Class Counsel.

6 J. "Released Parties" means any and all of the Defendants, their predecessors
7 and successors, their departments and agencies, and their past or present agents, employees, and
8 contractors.

9 K. "Settled Claims" means any and all actions, suits, claims, demands, rights,
10 liabilities, and causes of action, of every nature and description, whether known or unknown,
11 accrued or unaccrued, whether based on federal, state, local, statutory, or common law or any
12 other law, rule, or regulation, that were asserted or that could have been asserted or could be
13 asserted in this Action in any forum, that the Plaintiffs, the Class, the Class Members or any of
14 them, or any of their heirs, representatives, attorneys, successors, assigns, and any person they
15 represent, in the past had, now have, or during the pendency of the Stipulation might have against
16 the Defendants or any of them, which regard, concern, relate to, refer to, arise out of, or are based
17 upon, in any way: (a) the allegations, transactions, facts, matters, occurrences, representations,
18 omissions, disclosures, statements, failure to disclose, or failure to act involved, set forth, referred
19 to or that were, could be, or could have been asserted in the Action, including known and
20 Unknown Claims as herein defined, and whether or not concealed or hidden; (b) any Defendant's
21 provision or failure to provide evidence of LPR status, and the manner or timing of such
22 provision or non provision; (c) the Defendants' defense of or settlement of the Action. Provided,
23 however, that the definition of Settled Claims shall not in any way impair or restrict the rights of
24 the settling parties to invoke the dispute resolution provisions of this Stipulation at paragraphs 26-
25 29. Specifically, this definition does not restrict a class member's ability to pursue "Individual
26 Claims" except as set forth in paragraph V.26. As used herein, "Unknown Claims" shall mean
27 any and all actions, suits, claims, demands, rights, liabilities, and causes of action relating to or
28 arising from the allegations in the Action that the Plaintiffs, the Class, or any of the Class

1 Members do not know of or suspect to exist in their favor at the time of the release of the
2 Released Parties, including but not limited to those that, if known by them, might have affected
3 their agreement to the Settlement.

4 L. "Settlement" means the settlement contemplated by this Stipulation.

5 II. Release; Scope and Effect of Release

6 1. The obligations incurred pursuant to this Stipulation shall be a full and final
7 disposition of the Action with prejudice and of any and all Settled Claims as against all Released
8 Parties.

9 2. On the Effective Date, the Plaintiffs, the Class, and the Class Members, on behalf
10 of themselves, their heirs, executors, administrators, representatives, attorneys, successors,
11 assigns, agents, affiliates, and partners, and any Persons they represent ("Releasing Parties"),
12 shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and
13 forever released, relinquished, and discharged the Released Parties of and from any and all of the
14 Settled Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or
15 prosecuting any Settled Claim against any of the Released Parties. The terms of this paragraph do
16 not limit the Individual Claims or Class Claims that Plaintiffs may bring pursuant to paragraphs
17 26-29.

18 3. This Stipulation is contingent on the Court's vacating its permanent injunction
19 Order of December 22, 2005 (published at 2005 WL 3542661 (N.D. Cal 2005)) and the
20 preservation of the summary judgment Order (published at 388 F. Supp. 2d 1065 (N.D. Cal.
21 2005)). Defendants' concurrence with the preservation of the summary judgment Order does not
22 constitute, and shall not be deemed to imply, Defendants' agreement with the findings or
23 decisions contained in that Order.

24 4. In consideration for the releases contained herein, and subject to this Stipulation's
25 conditions, the Defendants will institute requirements, as detailed herein, for the issuance of
26 evidence of LPR status to Class Members who are issued any of the following final orders by
27 EOIR: (i) orders granting adjustment of status to permanent residence; (ii) orders granting
28 cancellation of removal and adjustment of status of a non-permanent resident to permanent

1 residence; (iii) orders granting suspension of deportation and adjustment of status of a non-
2 permanent resident to permanent residence; (iv) suspension of deportation or special rule
3 cancellation of removal; or (v) any other form of relief from removal that EOIR may grant that
4 results in a Class Member being granted LPR status at the conclusion of removal proceedings
5 (collectively, the "Covered Orders"). See 8 U.S.C. § 1159; 8 U.S.C. § 1186a; 8 U.S.C. § 1186b;
6 former 8 U.S.C. § 1254; 8 U.S.C. § 1229b(b); 8 U.S.C. § 1255; Pub. L. No. 106-429, § 101(a),
7 Nov. 6, 2000, 114 Stat 1900, 1900A-57; Pub. L. No. 106-378, Oct. 27, 2000, 114 Stat. 1442; Pub.
8 L. No. 105-277, Div. A, § 101(h), Oct. 21, 1998, 112 Stat. 2681-480, 2681-538; Pub. L. No. 105-
9 100, Title II, § 202, Nov. 19, 1997, 111 Stat. 2193; Pub. L. No. 104-208, Div. C, Title VI, Sept.
10 30, 1996, 119 Stat 3009-709; Pub. L. No. 102-404, Oct. 9, 1992, 106 Stat. 1969; Pub. L. No. 101-
11 238, S 2, Dec. 18, 1989, 103 Stat. 2099; Pub. L. No. 101-167, Title V, § 599E, Nov. 21, 1989,
12 103 Stat. 1263; Pub. L. No. 97-271, Sept. 30, 1982, 96 Stat. 1157; Pub. L. No. 95-145, Title I,
13 §§ 101-107, Oct. 28, 1977, 91 Stat. 1223; Pub. L. No. 89-732, Nov. 2, 1966, 80 Stat. 1161; 8
14 U.S.C. § 1255b; 8 U.S.C. § 1259; 8 U.S.C. § 1160; 8 U.S.C. § 1255a; 50 U.S.C. § 403h. As used
15 in this Stipulation, the term "Final Covered Order" shall apply to Covered Orders that satisfy
16 8 U.S.C. § 1101(a)(47)(B).

17 **III. Requirements for Issuance of Status Documentation**

18 **A. Notice to Class**

19 5. Defendants, acting through U.S. Immigration and Customs Enforcement ("ICE"),
20 agree to provide to any Class Member who receives a Covered Order from an Immigration Court
21 a written description of the Post-Order Instructions for obtaining documentation of LPR status
22 from USCIS at the time such Class Member receives such Covered Order. Defendants, acting
23 through the BIA, agree to provide to any Class Member who receives a Covered Order from the
24 BIA information in the decision on how to access DHS procedures for obtaining documentation
25 of LPR status from USCIS.

26 6. Defendants agree to post the information contained in the written description of
27 Post-Order Instructions on USCIS's public website, and to provide appropriate hyperlinks to the
28 Post-Order Instructions from other public websites maintained by DHS and DOJ.

7. Any Class Member who received a Covered Order prior to April 1, 2005 and who has not, as of the Effective Date of this Stipulation, received the Post-Order Instructions, shall be provided the Post-Order Instructions if and when he or she contacts USCIS seeking issuance of status documentation.

8. Defendants will also notify Class Members of the Settlement pursuant to a Court-approved Notice to the Class pursuant to paragraph 30 of this Stipulation.

B. Communication between ICE and USCIS of Class Members' Status

9. Within three (3) business days of a Class Member's Covered Order from an Immigration Court becoming final, ICE shall provide notice to USCIS that provides all necessary information for USCIS to process such Class Member's status documentation, such as verification that all required security and background checks have been completed, the Class Member's class admission code, and, where applicable, confirmation that the Department of State has provided such Class Member a visa number.

C. Timing of Issuance of Status Documentation

10. Subject to the exceptions in this Stipulation, USCIS shall issue a Permanent Resident Card (Form I-551) within (i) fifteen (15) business days of capture of the Class Member's biometrics at the Application Support Center ("ASC") as described in paragraph 15 of this Stipulation; or (ii) thirty (30) business days from the Starting Date, as defined in paragraph 11 of this Stipulation, whichever date is later.

11. For Class Members who have been issued a Final Covered Order as of the Effective Date of this Stipulation, the “Starting Date” shall mean: (i) the date on which the Class Member first presents himself or herself at a local USCIS office in conformity with paragraphs 12-14 of this Stipulation; or (ii) the Effective Date of this Stipulation, whichever is later. For future Class Members who receive a Final Covered Order after the Effective Date of this Stipulation, the “Starting Date” is the date on which the Class Member first presents himself or herself at a local USCIS office in conformity with paragraphs 12-14 of this Stipulation.

D. The Initial USCIS Appointment

12. In order to conform with this paragraph of the Stipulation, the Class Member must

1 make an appointment at a local USCIS office using InfoPass or other routine means used for
2 making USCIS appointments. For purposes of this Stipulation, this appointment at USCIS will
3 be termed the "InfoPass appointment." If the Class Member is unable to do so himself or herself
4 because the Class Member (or his or her representative, if any) does not have access to, or ability
5 to access, the Internet, or because InfoPass or other routine means used for making USCIS
6 appointments indicates the unavailability of such appointments, the Class Member may come to a
7 local USCIS office without previously contacting USCIS, and USCIS will schedule the Class
8 Member's USCIS appointment not later than two (2) weeks after the Class Member's visit to the
9 USCIS office.

10 13. In order to conform with this paragraph of the Stipulation, the Class Member must
11 appear at the USCIS appointment set pursuant to paragraph 12 of this Stipulation with the
12 following information: (i) his or her copy of the Covered Order; (ii) satisfactory evidence of his
13 or her identity; (iii) a passport, if available; and (iv) any USCIS receipt notice issued to the Class
14 Member in connection with the application for relief and any evidence of prior biometric
15 processing, if such documents are in the Class Member's possession. The failure to present the
16 items in (iii) and (iv) above will not affect the date of the commencement of the prescribed period
17 of time. Using the above documents, USCIS will verify the identity of the Class Member and that
18 the same Class Member has received a Final Covered Order.

19 14. If the Class Member does not bring the documents required in paragraph 13(i) and
20 (ii) to his or her InfoPass appointment, USCIS will schedule a subsequent InfoPass appointment
21 for the Class Member, and the prior appointment will not be deemed in conformity with
22 paragraph 13 of this Stipulation.

23 15. If at the time of an InfoPass appointment at USCIS that conforms with paragraphs
24 12 and 13 of this Stipulation, USCIS determines that the Class Member's biometrics have not
25 been previously obtained, or have not been obtained in a manner that can be retrieved by USCIS
26 for card production, USCIS shall schedule a new appointment at an ASC for biometrics capture
27 for the Class Member within fifteen (15) business days of the above-mentioned appointment. If a
28 Class Member is required to pay a DHS biometrics collection fee, and the Class Member can

1 demonstrate prior payment of that fee in association with his application for relief that EOIR
2 granted, the Class Member will not be charged additional fees for providing biometric
3 information at the ASC. A Class Member may demonstrate prior payment by showing a USCIS
4 fee receipt indicating such payment, a cancelled check for the biometric fee, a credit card receipt
5 for the fee, a copy of the money order submitted for the fee payment, or the customer receipt from
6 the institution that issued the money order.

7 16. The time periods described in paragraphs 10, 11, and 14 shall be tolled during any
8 period that a Class Member fails to attend a scheduled ASC appointment and provide biometrics,
9 fails to provide the information in 13(i) or 13(ii) necessary for processing his or her request for
10 documentation of LPR status, or fails to comply with any other requirements of such paragraphs.

11 **E. Administrative Remedies for Non-Issuance of Status Documentation**

12 17. USCIS shall establish a National Point of Contact ("POC"), with a dedicated e-
13 mail address or website, to accept inquiries from Class Members who do not receive status
14 documentation within the period specified in paragraphs 10 and 11 of this Stipulation.

15 18. Any Class Member who does not receive documentation of LPR status within the
16 period specified in paragraphs 10 and 11 of this Stipulation may, personally or through a
17 representative, contact the POC at the dedicated USCIS e-mail address or through a USCIS
18 website location, provided that USCIS is able to establish such a website location as a
19 replacement for the e-mail process. If a Class Member is unable to send an e-mail to the POC or
20 to use the replacement website location, once implemented, to contact the POC, the Class
21 Member may call the USCIS National Customer Service Center toll free number to make such
22 inquiry, and the USCIS National Customer Service Center shall collect the information listed in
23 paragraph 19 and transmit it to the national POC.

24 19. The Class Member or his or her representative, in the e-mail to the POC or the
25 replacement USCIS website location (if created) or the call to the USCIS National Customer
26 Service Center referred to in paragraph 18, must transmit the following information: (a) Class
27 Member's name; (b) Class Member's "A number"; (c) Class Member's date of birth; (d) Class
28 Member's address; (e) the date the Class Member's Covered Order became final; (f) type of relief

1 granted to the Class Member by EOIR; (g) location of USCIS office where Class Member
2 attended an InfoPass appointment at USCIS; (h) dates of Class Member's USCIS InfoPass
3 appointment(s) and ASC appointments (if applicable); and (i) any other available information
4 regarding Class Member's efforts to obtain status documentation. In order to ensure that the class
5 member provides all the information elements in this paragraph necessary for the POC to inquire
6 about the class member's status documentation, USCIS may provide a form to be attached to the
7 class member's e-mail, or create a replacement website format, for the class member to complete
8 the requested information.

9 20. Within twenty-one (21) business days after a Class Member or his or her
10 representative sends the e-mail, submits the USCIS website form (once created), or contacts the
11 toll free number and conveys the required information in paragraph 19, USCIS shall mail or
12 otherwise issue to the Class Member a Permanent Resident Card (Form I-551). If USCIS does
13 not mail or otherwise issue a Form I-551 to a Class Member within such period, then: (i) the
14 Class Member may appear without an appointment at a local USCIS office; (ii) at such
15 appearance, after USCIS confirms that USCIS has not mailed or otherwise issued the Class
16 Member's Form I-551, USCIS shall issue the Class Member temporary documentation of LPR
17 status that is sufficient for the Class Member to present when required to provide evidence of his
18 or her immigration status for travel, employment, or other purposes requiring such evidence. Any
19 such temporary documentation shall be valid for at least six (6) months. DHS shall issue a
20 permanent I-551 card to the Class Member within six (6) months of issuing the temporary
21 documentation. When issuing either temporary or permanent documentation of status, nothing in
22 this Stipulation shall prevent Defendants from complying with the requirements for secure
23 documents as contained in section 303(b) of the *Enhanced Border Security and Visa Entry*
24 *Reform Act*, Pub. L. No. 107-173 (2002) (*codified, as amended*, at 8 U.S.C. § 1732(b)).
25 Defendants are expected to meet their obligations to issue temporary documentation under this
26 paragraph consistent with the U.S. Code.

27 21. USCIS will maintain for two (2) years following the Effective Date of this
28 Stipulation records of all Class Members who identify themselves to the POC or to the USCIS

1 National Customer Service Center toll free number in conformity with paragraph 24 of this
2 Stipulation.

3 **F. National Security Exception**

4 22. Plaintiffs agree, on behalf of themselves, the Class, and the Class Members, that
5 nothing in this Stipulation shall limit Defendants from withholding evidence of LPR status from a
6 Class Member beyond any of the time periods stated in this Stipulation, where Defendants
7 possess specific and particular information about that Class Member that was not previously
8 disclosed by the Class Member, on the record while in removal proceedings, that the Class
9 Member may be a risk to national security or public safety. The USCIS Director or Deputy
10 Director will certify, in writing, that (a) Defendants possess the specific and particular
11 information, as described in this paragraph, that the Class Member may be a risk to national
12 security or public safety; (b) he or she has reviewed and considered such information that is
13 available to USCIS, and (c) he or she approves the decision to withhold documentation of LPR
14 status from the Class Member for national security or public safety reasons as provided in this
15 paragraph. This writing is not required to be in the form of a declaration, affidavit, or any other
16 statement or writing made under oath or the penalty of perjury. Plaintiffs also agree that nothing
17 in this Stipulation shall limit Defendants' authority to promulgate regulations, issue policy
18 directives and guidance, and to take other appropriate action, as necessary, concerning
19 background and security investigations conducted on aliens or the issuance of documents to
20 aliens.

21 **G. Emergency Request for Issuance of Status Documentation**

22 23. A Class Member may seek issuance of temporary status documentation at any
23 InfoPass appointment at USCIS where the class member provides the information in paragraph
24 13(i) and 13(ii) of this Stipulation if: (a) he or she brings written evidence demonstrating an
25 emergency need to travel (e.g., death or imminent death of an immediate family member abroad
26 or severe illness of a minor child or dependent who needs medical treatment abroad); or (b)
27 demonstrates an emergency need for documentation evidencing his or her eligibility for
28 employment. USCIS will ordinarily provide such temporary documentation of LPR status if the

1 Class Member's checks have been completed and establish that the Class Member does not pose a
2 risk to national security or public safety.

3 **IV. Defendants' Reporting Obligations**

4 24. Defendants agree that, for two (2) years following the Effective Date of this
5 Stipulation, USCIS will provide quarterly reports ("Quarterly Reports") to class counsel listing
6 (by name and A-file number) Class Members who have contacted the POC pursuant to
7 paragraphs 17-20 of this Stipulation during the reporting period and who have not been issued
8 documentation of LPR status by the due date of the Quarterly Report. The Quarterly Report shall
9 identify, for each Class Member, whether the relevant time period for issuance of documentation
10 of LPR status under this Stipulation has indeed expired and any reason Defendants assert for not
11 issuing status documentation; provided, however, that USCIS will not list any reason provided for
12 in paragraph 22 of this Stipulation in the Report. USCIS will provide such quarterly reports to
13 class counsel within twenty-one (21) business days after the end of each quarter, which end on
14 March 31, June 30, September 30, and December 31 of each year.

15 25. Defendants will include in the Quarterly Report to Class Counsel the number of
16 times, if any, during the period that status documents have been withheld for the reason provided
17 for in paragraph 22 of this Stipulation.

18 **V. Dispute Resolution Procedures; Exhaustion of Remedies**

19 26. Plaintiffs, on behalf of themselves, the Class, and the Class Members, agree that:
20 (a) their sole and exclusive remedy for any alleged breach of this Stipulation is specified in
21 paragraphs 27 ("Class Claims") and 28 ("Individual Claims") of this Stipulation; (b) no Class
22 Member may bring either an Individual Claim or a Class Claim (as defined herein) unless such
23 Class Member has (i) appeared at an InfoPass appointment or other routine means used for
24 making USCIS appointments at USCIS in conformity with paragraphs 12 and 13 of this
25 Stipulation; (ii) if applicable, appeared at an ASC appointment in conformity with paragraph 15
26 of this Stipulation; (iii) contacted the POC in conformity with paragraphs 17 through 19 of this
27 Stipulation; and (iv) not been issued documentation of LPR status within the twenty-one (21)-
28 business day period in paragraph 20 of this Stipulation; and (c) that the Court's summary

1 judgment Order of August 24, 2005 (published at 388 F.Supp.2d 1065 (N.D. Cal. 2005) shall not
2 constitute *res judicata* for claim or issue preclusion purposes in the context of either the
3 Individual Claims that may be brought under paragraph 28 or the Class Claims that may be
4 brought under paragraph 27. Any claim that does not meet the requirements of this paragraph
5 shall be dismissed. Defendants reserve any and all applicable defenses, including those that may
6 become available if the law changes, to any Class or Individual Claim filed under this Stipulation.

7 **A. Class Claims**

8 27. A "Class Claim" is any claim by a Class Member, represented by Class Counsel,
9 to enforce this Stipulation on behalf of the Class. This Court has sole and exclusive jurisdiction
10 to hear any Class Claim. No Class Claims may be filed or made, individually or collectively,
11 unless: (i) the Class Member making the Class Claim can identify at least 25 Class Members
12 from a minimum of 4 different USCIS districts who have exhausted all of the procedures required
13 of them in paragraphs 12 through 20 of this Stipulation without receiving documentation of LPR
14 status, (ii) such Class Members still have not received their documentation of LPR status after
15 two (2) calendar quarters since the Class Members exhausted those procedures; and (iii) the Class
16 Member making the Class Claim has identified the 25 Class Members in subpart (i), including
17 names and A numbers, to the USCIS Chief Counsel, in writing, at least sixty (60) days in advance
18 of requesting enforcement by the Court. The 60-day notice period in subpart (iii) may run
19 concurrently, in whole or in part, with the calendar quarters in subpart (ii). Defendants reserve
20 and do not waive any defenses that they may have to a Class Claim, including defenses without
21 limitation already raised in the Litigation and defenses that may arise under new laws or
22 regulations.

23 **B. Individual Claims**

24 28. An "Individual Claim" is an action brought by an individual Class Member to
25 invoke court assistance to obtain individual relief in the form of documentation of LPR status.
26 An Individual Claim may be brought in this Court or in any other federal district court with
27 jurisdiction over the parties. A Class Member's exhaustion of remedies does not per se establish
28 that such Class Member has met his burden to prove the individual claim brought pursuant to this

1 Stipulation. With the exception of the requirements set forth in paragraph 26, this Stipulation
2 does not restrict a Class Member's ability to pursue actions in accordance with this paragraph.
3 Defendants reserve and do not waive any defenses that they may have to an Individual Claim,
4 including defenses without limitation already raised in the Litigation and defenses that may arise
5 under new laws or regulations.

6 29. If a Class Member who has not received documentation of LPR status for the
7 reasons allowed in paragraph 22 of this Stipulation files an Individual Claim, and the court
8 determines that the Individual Claim was filed in accordance with this Stipulation, Defendants
9 shall, within thirty (30) days of such determination, inform the Class Member or his appropriate
10 representative in his individual lawsuit, in writing, that the Director or Deputy Director of USCIS
11 has made a determination to withhold that Class Member's evidence of status beyond the
12 applicable time period in the Stipulation because DHS possesses specific and particular
13 information that the Class Member may be a risk to national security or public safety; provided,
14 however, that issuing documentation of LPR status to that Class Member prior to that time will
15 obviate the need for USCIS to provide such writing. Defendants are not required to describe the
16 nature or details of information that they possess regarding Class Members for whom Defendants
17 decide to withhold evidence of LPR status under paragraph 22 of this Stipulation.

18 **VI. Terms of Order for Notice and Hearing**

19 30. Concurrently with their filing of this Stipulation, Class Counsel and Defendants'
20 Counsel shall jointly apply to the Court for preliminary Court approval of the Settlement
21 contemplated by this Stipulation and entry of a Preliminary Approval Order, substantially in the
22 form appended hereto as Exhibit A. Such Preliminary Approval Order will seek approval of a
23 Notice to the Class, as well as a finding that the following satisfies the publication requirements
24 of Fed. R. Civ. P. 23: (i) posting the Notice to the Class and this Stipulation in appropriate places
25 on the USCIS, ICE, and DOJ/EOIR public websites, and (ii) distributing within three (3) business
26 days of the date of the Court's preliminary approval of this Stipulation, the Notice to the class and
27 the Stipulation to all immigration assistance providers listed on the Roster of Recognized
28 Organizations and Accredited Representatives maintained by EOIR pursuant to 8 C.F.R. §§ 292

1 and 1292, and the Pro Bono Program section of the EOIR website.

2 **VII. Terms of Order and Final Judgment**

3 31. If the Settlement contemplated by this Stipulation is approved by the Court,
4 counsel for the parties shall request that the Court enter Final Judgment substantially in the form
5 appended hereto as Exhibit B. Such Final Judgment shall include a full vacatur of the Court's
6 permanent injunction Order of December 22, 2005 (slip copy published at 2005 WL 3542661
7 (N.D. Cal. 2005)) with such vacatur effective as of the date of the Final Judgment, except as to
8 those matters that will remain the subject of the District Court's retained jurisdiction under
9 paragraph 27 of this Stipulation. The Final Judgment shall not include vacatur of the Court's
10 summary judgment Order of August 24, 2005 (published at 388 F. Supp. 2d 1065 (N.D. Cal.
11 2005)).

12 32. Within 60 days following the Court's entry of the Final Judgment, Defendants will
13 publish a Notice of Final Settlement Agreement according to the methods set forth in paragraph
14 30. The language of the Notice of Final Settlement Agreement will be agreed upon by the parties
15 and will constitute an updated Notice to the Class.

16 **VIII. Effective Date of Settlement, Waiver or Termination**

17 33. The Effective Date of this Stipulation shall be the date when all of the following
18 shall have occurred:

19 (a) entry of the Preliminary Approval Order in all material respects in the form
20 appended hereto as Exhibit A;

21 (b) approval by the Court of this Stipulation, following notice to the Class and
22 a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

23 (c) entry by the Court of Final Judgment, in all material respects in the form
24 appended hereto as Exhibit B.

25 34. In the event that the District Court's approval of the Stipulation or the Final
26 Judgment referenced in 33(c) is voided on appeal, vacated, or terminated, the parties' good faith
27 adherence to the terms of this Stipulation prior to said voidance, vacation or termination shall not
28 be considered unlawful.

1 35. Defendants' Counsel or Class Counsel shall have the right to terminate the
2 Settlement and this Stipulation by providing written notice of their election to do so
3 ("Termination Notice") to all other parties hereto within thirty (30) days of (a) the Court's
4 declining to enter the Preliminary Approval Order or modification of that Preliminary Approval
5 Order in any material respect; (b) the Court's declining to approve the Settlement embodied in
6 this Stipulation, or any material part of it; (c) the Court's declining to enter the Final Judgment or
7 modification of the Final Judgment in any material respect; (d) the date upon which the Final
8 Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of
9 Appeals or the United States Supreme Court; or (e) the date upon which an Alternative Judgment
10 is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or by
11 the United States Supreme Court.

12 36. Except as otherwise provided herein, in the event the Settlement is terminated or
13 modified in any material respect or fails to become effective for any reason, then the Settlement
14 shall be without prejudice and none of its terms shall be effective or enforceable; the parties to
15 this Stipulation shall be deemed to have reverted to their respective status in the Action as of the
16 date and time immediately prior to the execution of this Stipulation; and except as otherwise
17 expressly provided, the parties shall proceed in all respects as if this Stipulation and any related
18 orders had not been entered. In the event the Settlement is terminated or modified in any material
19 respect, the Defendants shall be deemed not to have waived, modified, or be estopped from
20 asserting any additional defenses available to them.

21 IX. Termination of Obligations

22 37. The obligations of this Stipulation shall terminate after two (2) years from the
23 Effective Date without further action by the Court. The termination of this Stipulation shall not
24 extinguish or diminish the District Court's authority to resolve claims pending during the
25 effective period of the Stipulation pursuant to the District Court's retained jurisdiction under
26 paragraph 27, nor shall the termination of the Stipulation extinguish or diminish the rights of any
27 party with such pending claims to obtain relief based on the terms of this Stipulation.

28 X. No Admission of Wrongdoing

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

3 (a) shall not be construed to waive, reduce or otherwise diminish the authority
4 of the Defendants to enforce the laws of the United States against Class Members
5 notwithstanding the terms of this Stipulation, consistent with the Constitution and laws of the
6 United States.

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

14 (c) shall not be offered or received against the Defendants as evidence that
15 failure to provide documents within the time frame set forth herein, or within any time frame, is
16 unjustified or illegal; and

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

24 **XI. Attorneys' Fees**

25 39. Within 90 days of entry of a final and nonappealable judgment in this case
26 approving this Stipulation, Defendants will deliver to Class Counsel the sum of \$575,000, in
27 settlement of all claims for attorneys' fees and costs that could have been or will be claimed in
28 this litigation. Defendants shall bear any costs incurred in connection with notifying the class of

1 the terms and conditions of this Stipulation.

2 **XII. Additional Provisions**

3 40. This Stipulation, and the obligations incurred herein, shall be in full and final
4 disposition of the Action with prejudice and any and all Settled Claims against Defendants. On
5 the Effective Date, Plaintiffs shall be deemed to have fully, finally, and forever released,
6 relinquished, and discharged the Defendants of and from any and all Settled Claims.

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

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

11 43. The headings herein are used for the purpose of convenience only and are not
12 intended to have legal effect.

13 44. The administration and consummation of the Settlement as embodied in this
14 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
15 purpose of enforcing the terms of this Stipulation.

16 45. The waiver by one party of any breach of this Stipulation by any other party shall
17 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

18 46. This Stipulation and its exhibits constitute the entire agreement among the parties
19 hereto concerning the Settlement of the Action, and no representations, warranties, or
20 inducements have been made by any party hereto other than those contained and memorialized in
21 such documents.

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

26 48. This Stipulation shall be binding upon, and inure to the benefit of, the successors
27 and assigns of the parties hereto.

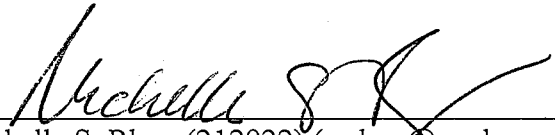
28 49. This Stipulation shall not be construed more strictly against one party than another

1 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
2 the parties, it being recognized by the parties that this Stipulation is the result of arm's length
3 negotiations between the parties and that all parties have contributed substantially and materially
4 to the preparation of this Stipulation.

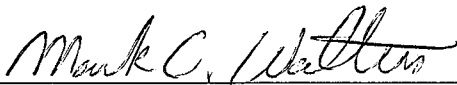
5 50. All counsel and any other person executing this Stipulation and any of the exhibits
6 hereto, or any related settlement documents, warrant and represent that they have the full
7 authority to do so and that they have the authority to take appropriate action required or permitted
8 to be taken pursuant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

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

14
15 Dated: July 2, 2007


Michelle S. Rhyu (212922) (mrhyu@cooley.com)
COOLEY GODWARD KRONISH LLP
Attorneys for Plaintiffs Santillan, et. al.

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19
20 Dated: December 27, 2007


Mark Walters (Mark.Walters@usdoj.gov)
OFFICE OF IMMIGRATION LITIGATION
Attorney for Defendants