PRACTICE ADVISORY[1]:
Settling FTCA Litigation for Immigration Relief

May 6, 2021

This practice advisory discusses strategies for obtaining immigration relief as part of a settlement agreement with the government to resolve a lawsuit for damages brought under the Federal Tort Claims Act (FTCA) based on torts committed by agents of U.S. Immigration and Customs Enforcement (ICE) and/or U.S. Customs and Border Protection (CBP).[2]

The FTCA allows noncitizens and citizens to obtain redress for the misconduct of federal agents, including immigration enforcement officers. Although the FTCA itself only provides only for money damages, plaintiffs may also negotiate settlement agreements that help them obtain immigration relief. Though ICE and CBP generally cannot enter into settlements binding the Executive Office of Immigration Review (EOIR) or U.S. Citizenship and Immigration Services (USCIS) to grant immigration relief, ICE may agree to file stipulations or joint motions for relief before an immigration judge (IJ) or the Board of Immigration Appeals (BIA), as well as to exercise its own discretion in favor of your client. Importantly, it is possible to obtain both immigration relief and money damages as part of a single settlement agreement.

Administrative guidance issued under the Obama and Biden Administrations should facilitate settlement negotiations aimed at achieving immigration relief for your client. Under a 2011 ICE memo, which remains in effect, the filing of a bona fide civil rights lawsuit (including an FTCA case) provides a basis for ICE to agree to a stay or deferral of removal, release from

[1] Publication of the National Immigration Project of the National Lawyers Guild (NIPNLG) and the Asylum Seeker Advocacy Project (ASAP), 2021. This practice advisory is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). This practice advisory is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case. Counsel should independently confirm whether the law has changed since the date of this publication. The authors of this practice advisory are Amit Jain, Litigation and Policy Counsel at ASAP, and Joseph Meyers, Justice Catalyst Fellow at NIPNLG. The authors would like to thank the following individuals and organizations for their comments: Conchita Cruz, Zachary Manfredi, and Dennise Moreno from ASAP; Cristina Velez from NIPNLG; and Bree Bernwanger and Hayden Rodarte from the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. The authors would also like to thank the Yale Law School Worker and Immigrant Rights Advocacy Clinic (WIRAC) for providing two of the settlement agreements excerpted in the appendix.

[2] The forms of relief discussed below may also be available when settling other types of damages cases against the government, including *Bivens* actions and 42 U.S.C. §§ 1985(2) and (3) actions. Indeed, some of the settlements analyzed herein resolved such claims for relief in addition to FTCA claims.

detention, withdraw a detainer, seek dismissal without prejudice, or grant deferred action.[3] The memo provides that ICE "should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness . . . [of plaintiffs in bona fide civil rights litigation] to call police and pursue justice." And it provides that ICE officers and attorneys should exercise "all appropriate discretion" in detention and enforcement decisions in cases involving individuals pursuing legitimate civil rights complaints.[4]

Under the Biden Administration, the Acting DHS Secretary and Acting ICE Director have issued interim guidance creating new immigration removal and enforcement priorities and taken steps to restore prosecutorial discretion.[5] In addition, a June 2020 EOIR policy memo providing guidance for best practices during the COVID-19 pandemic "encourage[s]" parties "to resolve cases through written pleadings, stipulations, and joint motions" and provides that "a stipulated order granting protection or relief from removal or joint motions to terminate or dismiss proceedings . . . shall be adjudicated expeditiously by an [IJ]."[6] Though the memo also states that "the ultimate disposition of any particular case remains committed to the [IJ] in accordance with the law," so long as this policy in favor of resolving cases through stipulations and joint motions remains in effect, it should help obtain IJ and/or BIA approval of relief stipulated to in settlement agreements.

The following sections lay out general considerations in negotiating for immigration relief, discuss case-specific issues to consider, and describe specific tools for obtaining relief. Finally, the appendices include examples of court-approved settlement agreements in which plaintiffs obtained concessions related to immigration relief. Practitioners should keep in mind that they will not always be able to obtain immigration relief through settlement: your ability to negotiate such a settlement will depend on the facts and circumstances of your client's particular case.

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[3] *See* John Morton, Office of Dir., U.S. Immigration and Customs Enforcement, Policy No. 10076.1, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, at 2 (June 17, 2011) ("Morton Memo"), https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf; see also Matthew T. Albence, Office of Dir., U.S. Immigration and Customs Enforcement, *Letter to Congress Regarding U Nonimmigrant Status (U Visa) Cases*, at 2 (Sept. 27, 2019) (stating that Morton Memo "remains in effect"), https://asistahelp.org/wp-content/uploads/2019/10/ICE-Letter-to-Rep.-Castro- September-2019.pdf.

[4] Morton Memo, *supra* note 3, at 1-2.

[5] *See* David Pekoske, Department of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), https://www.dhs.gov/sites/ default/files/publications/21_0120_enforcement-memo_signed.pdf.

[6] *See* James R. McHenry, Office of Dir., Executive Office for Immigration Review, *EOIR Practices Related to the COVID-19 Outbreak*, at 5-6 (June 11, 2020), https://www.justice.gov/eoir/page/file/1284706/download.

I. Considerations

Clients who wish to settle for immigration relief are generally seeking the most durable form of relief possible. To the extent possible, your client may wish to avoid mechanisms like deferred action or administrative closure, which could leave your client vulnerable to removal once they expire, in favor of more lasting forms of protection, like stipulations to asylum or other status (or, for individuals who already have status, termination of immigration court proceedings with prejudice).

Be aware that the government will almost invariably open negotiations by asserting that immigration relief is a non-starter in civil settlement, which may or may not be true in your case. In addition, as noted above, past settlements did not tend to grant benefits outright, in that they have not bound the ultimate discretion of immigration adjudicators (except ICE, in cases involving deferred action). Instead, settlements have usually established that the client will be eligible to apply for an immigration benefit with USCIS (e.g., employment authorization) or, in immigration court proceedings, that ICE will stipulate to a benefit before EOIR (e.g., a joint motion for asylum). However, as a backstop, successful settlement agreements have generally included a proviso that if the benefit is ultimately denied by the adjudicator, the client "may, in [their] sole discretion, void this Agreement."

Of course, the most important considerations in determining what form of immigration relief to pursue, in settlement or otherwise, are the circumstances of your client's case. Here are some questions to consider:

Is your client physically inside or outside of the United States?

- If outside of the United States, options will be more limited and may include visa processing, refugee processing, or humanitarian parole.
- If inside of the United States, **is your client in removal proceedings in immigration court?**
    - If your client is not in removal proceedings, **do they have a final order of removal?**
        - If they do not have a final order of removal, you might consider stipulations involving affirmative asylum, a U Visa, or other benefits through USCIS.
        - If they do have a final order of removal, you might consider whether grounds may exist for a joint motion to reopen or, in the worst case, consider deferred action.
    - If your client is in removal proceedings:
        - **Do they have preexisting status** (e.g., are they a Lawful Permanent Resident (LPR))**?** If so, you might consider termination of the proceedings

with prejudice if appropriate, or at least dismissal without prejudice on DHS's motion.

- **Is the IJ presiding over their case likely to accept a stipulation to relief?** Some IJs may reject stipulations to relief (particularly asylum) due to changes in law under the Trump Administration, as outlined in further detail below, whereas other IJs might readily accept such stipulations.
- **How soon is their individual hearing?** If your client's individual hearing is years away, changes in law between now and then may make a stipulation harder for the IJ to deny. You might consider vesting your client with discretion to file a joint motion at any time before their hearing, then time the filing in immigration court to maximize the odds of its acceptance.
- **How strong are their claims for relief?** If your client has a stronger argument against removability or in favor of relief, a stipulation will be easier to achieve and an IJ will be more likely to accept it—but pursuing a stipulation in settlement may be less necessary.

II. Tools to Consider

A. Previously Used Tools

Past FTCA settlements for immigration relief have involved the following benefits or tools. Note that many of these benefits or forms of relief have been restricted by changes in law under the Trump Administration that have yet to be reversed, as described further below.

- **Stipulation to Grant of Asylum:** Asylum is one of the most durable forms of relief available under current immigration law, and it offers a pathway to LPR status and citizenship. In at least one prior FTCA settlement involving a plaintiff in immigration court proceedings, ICE agreed to join a "motion to grant asylum," and the plaintiff reserved the right to void the agreement if the immigration court ultimately denied the joint motion.[7] This could also be styled as a "stipulation and non-opposition to asylum," under which ICE stipulates that the respondent has established the elements for relief and consents to or does not oppose the grant.
    - Barriers: A series of recent attorney general decisions on immigration law restricted gender-based, gang-based, and family-based asylum claims,[8] which may affect many asylum-seeking clients. One decision emphasized that the BIA must review even unchallenged elements of asylum claims on appeal in most

[7] *Franco-Gonzalez v. Napolitano*, No. 2:10-cv-02211 (C.D. Cal.), ECF No. 678 (below, **Appendix C**).

[8] *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021); *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

cases;[9] some IJs might read this case to disfavor accepting stipulations to elements of asylum even prior to appeal.

- However, a February 2, 2021 executive order[10] directs review of recent asylum decisions within 180 days and promulgation of a new regulation to define "particular social group[s]" within 270 days. The new regulation may overrule, at least, the two substantive attorney general decisions and ensure that a broader range of individuals have viable asylum claims.
- You could also cite the June 2020 EOIR policy memo,[11] which "encourage[s]" parties to "resolve cases through written pleadings, stipulations, and joint motions" and provides that IJs shall "expeditiously" adjudicate stipulated orders granting relief from removal.

- **Joint Motion for Administrative Closure:** Multiple past FTCA settlements included agreements to file joint motions for administrative closure in removal proceedings.[12] Because administrative closure is not a form of status and can be reversed at any time, it should not be the sole component of a settlement, but it may be useful in certain cases.
  - Barriers: The attorney general's decision in *Matter of Castro-Tum*[13] bars administrative closure—even on consent—except in rare circumstances unlikely to apply to your client. However, the Fourth and Seventh Circuits have overturned *Castro-Tum*, making administrative closure available in those jurisdictions.[14] In other circuits, administrative closure is likely unavailable.
  - The Trump Administration also promulgated a revised version of 8 C.F.R. § 1003.10, effective January 15, 2021, that sought to codify *Castro-Tum*.[15] However, a federal district court has enjoined the regulation nationwide.[16]

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[9] *Matter of A-C-A-A-*, 28 I&N Dec. 84.

[10] Exec. Order No. 14,011, 86 Fed. Reg. 8,273 (Feb. 2, 2021), https://www.federalregister.gov/documents/2021/02/05/2021-02562/establishment-of-interagency-task-force-on-the-reunification-of-families.

[11] McHenry, *supra* note 6, at 5-6.

[12] *Nuñez-Escobar v. Gaines*, No. 3:11-cv-994 (M.D. Tenn.), ECF No. 580; *Cahuec-Castro v. Worsham*, No. 3:11-cv-928 (M.D. Tenn.); *Tapia-Tovar v. Epley*, No. 3:11-cv-00102 (M.D. Tenn.); *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU (D. Conn.).

[13] 27 I&N Dec. 271 (A.G. 2018).

[14] *See Meza Morales v. Barr*, 973 F.3d 656 (7th Cir. 2020) (holding *Castro-Tum* was an erroneous interpretation of EOIR regulations); *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019) (same). *But see Hernandez-Serrano v. Barr*, 981 F.3d 459 (6th Cir. 2020) (upholding *Castro-Tum*).

[15] Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,588 (Dec. 16, 2020) (codified at 8 C.F.R. pts. 1003, 1240), https://www.govinfo.gov/content/pkg/FR-2020-12-16/pdf/2020-27008.pdf.

[16] *Centro Legal de la Raza v. EOIR*, No. 21-cv-00463-SI, 2021 WL 916804 (N.D. Cal. Mar. 10, 2021), https://www.courtlistener.com/recap/gov.uscourts.cand.372189/gov.uscourts.cand.372189.59.0.pdf.

- **Joint Motion to Terminate with Prejudice:** Multiple past FTCA settlements included joint motions to terminate removal proceedings, often with prejudice.[17] These cases generally involved people with LPR or other durable immigration status. Termination under any other circumstance risks leaving your client without protection from deportation.
    - Barriers: Another recent attorney general decision foreclosed termination with prejudice in many circumstances, apparently including cases where it is based only on the parties' consent.[18] However, even if the Biden Administration maintains this interpretation of the law, a joint motion for termination remains an option where there are independent, colorable grounds for termination, such as issues with the content of the Notice to Appear (NTA), service of the NTA, or the client's removability.

- **Joint Motion to Dismiss Without Prejudice:** DHS also has discretion to move to *dismiss* removal proceedings *without prejudice* where "[c]ircumstances of the case have changed . . . to such an extent that continuation is no longer in the best interest of the government" or where the NTA was "improvidently issued." 8 C.F.R. §§ 1239.2(c), 239.2(a)(6), (7).
    - Dismissal without prejudice also requires IJ approval.[19] However, the broad language of § 239.2(a)(7) suggests that an IJ ought to defer to DHS's interpretation of changed circumstances and the government's interests. In the few cases in which the BIA has interpreted this provision, it has deferred to DHS.[20]
    - Even if a dismissal in immigration court is without prejudice, you might seek DHS's agreement in civil settlement not to bring new charges of removability on the same grounds.[21]

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[17] *Migrant Justice v. Wolf*, No. 5:18-cv-192 (D. Vt.), https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf; *Villanueva-Ojanama v. United States*, No. 3:13-cv-1617-RNC (D. Conn.) (below, **Appendix B**).; *Avalos-Palma v. United States*, No. 3:13-cv-05481 (D.N.J.); *Alvarez v. United States*, No. 1:10-cv-03333-WMN (D. Md.); *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU (D. Conn.) (below, **Appendix A**).

[18] *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018).

[19] *See Matter of S-O-G- & F-D-B-*, 27 I&N Dec. at 466; *Matter of Andrade Jaso and Carbajal Ayala*, 27 I&N Dec. 557, 558 (BIA 2019).

[20] *See In re: Francisco Rodriguez-Quiroz*, 2017 WL 6555092, at *1 (BIA Sept. 26, 2017) (granting motion to terminate without prejudice and describing the provision as part of DHS's "prosecutorial discretion in removal proceedings"); *In re: Nguyet Thi Nguyen*, 2007 WL 1180493, at *1 (BIA Mar. 14, 2007) (ruling that IJ should have granted DHS's motion to dismiss without prejudice under this provision even where there was "no legal basis to 'terminate' the proceedings").

[21] Note also that for LPRs, the ability to travel internationally and return to the United States is often a priority. These clients may want some assurance that they will be able to travel internationally, and return to the United States, if their removal proceedings are dismissed without prejudice. This could take the form of a grant of extended deferred action at ports of entry.

- **Deferred Action, Employment Authorization, and Advance Parole:** Multiple past FTCA settlements included provisions establishing frameworks for clients to receive deferred action, employment authorization, and/or advance parole.[22] Some of these settlements included processing time limits, particularly for employment authorization, and reserved the plaintiff's right to void the settlement if the benefits were denied or the time limits were exceeded. (This is highly relevant now, as USCIS processing is extraordinarily backlogged, and the agency may take many months to process applications for employment authorization.) Because deferred action allows the recipient to apply for work authorization and certain state or local benefits, it can be very valuable, especially if coupled with U Visa certification. However, because it does not provide durable protection, your client may prefer a more lasting form of relief.
    - There are no formal bars to deferred action, but like many immigration benefits, it is discretionary. USCIS issued a Policy Alert[23] in the waning days of the Trump Administration establishing "favorable" and "unfavorable" discretionary factors[24] for deferred action. The factors focus on criminal histories and violations of immigration law.

- **Humanitarian Parole:** Your client may require humanitarian parole under 8 U.S.C. § 1182(d)(5)(A) in order to enter the country or, if already present, to obtain certain kinds of relief. Plaintiffs in at least one civil rights case have reached a settlement agreement under which ICE agreed to "take no steps to interfere, positively or negatively, with USCIS's consideration of those requests."[25] Note, however, that attorneys for separated families should first determine whether their clients are already eligible for humanitarian parole before negotiating this as part of a settlement agreement.
    - ICE may take the position that it cannot independently grant humanitarian parole, or that your client must separately apply for parole through USCIS. However, a 2008 memorandum of agreement between ICE, USCIS, and CBP states that ICE

[22] *Migrant Justice v. Wolf*, No. 5:18-cv-192 (D. Vt.), https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf; *Nuñez-Escobar v. Gaines*, No. 3:11-cv-994 (M.D. Tenn.), ECF No. 580; *Cahuec-Castro v. Worsham*, No. 3:11-cv-928 (M.D. Tenn.); *Tapia-Tovar v. Epley*, No. 3:11-cv-00102 (M.D. Tenn.); *Alvarez v. United States*, No. 1:10-cv-03333-WMN (D. Md.); *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU (D. Conn.) (below, **Appendix A**).

[23] USCIS, *Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action* (Jan. 14, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210114-DiscretionaryEADForAOSAndDA.pdf.

[24] USCIS, Policy Manual, Chapter 3 - Aliens Granted Deferred Action (last updated Apr. 27, 2021), https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-3.

[25] *Nuñez-Escobar v. Gaines*, No. 3:11-cv-994 (M.D. Tenn.), ECF No. 580.

is authorized to staff humanitarian parole requests for noncitizens participating in federal judicial proceedings and investigations.[26]

- **Other Tools:** Past FTCA settlements have also included agreements to **cancellation of immigration bond**,[27] **withdrawing revocation of naturalization proceedings,**[28] or **voluntary departure**.[29]

B. Other Tools to Consider

In addition to tools that have already been used to obtain immigration relief through settlement, you may also consider other, untested options depending on the needs of your client's case.

- **Joint Motion for U Visa Certification:** If your client has been the victim of a qualifying crime resulting in substantial physical or mental abuse and has been or is likely to be helpful to law enforcement in investigating or prosecuting that crime, they may be eligible for a U Visa.[30] To obtain a U Visa, your client must file an application that includes a Form I-918, Supplement B, commonly called a "U Visa certification," which is a certification by an authorized official that the petitioner was the victim of a crime and has been or will be helpful in investigating that crime.[31]
    - To qualify for a U Visa (and a U Visa certification), your client will need to show, among other things, that the client's treatment was "substantially similar" to a qualifying crime[32] *and* that the client "has been helpful, is being helpful, or is likely to be helpful" to law enforcement or "a Federal or State Judge."[33]
    - Because federal judges are officials qualified to certify U Visa applications,[34] if the conduct that formed the basis of your client's FTCA complaint may also be qualifying criminal activity for purposes of a U Visa, you may consider negotiating for a joint or unopposed motion for a U Visa certification before the federal court.[35] You will need to educate the judge about the U Visa process (and

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[26] *See Memorandum of Agreement: Coordinating the Concurrent Exercise by USCIS, ICE, and CBP of the Secretary's Parole Authority under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside the United States* (Sept. 10, 2008), https://www.ice.gov/doclib/foia/reports/parole-authority- moa-9-08.pdf.

[27] *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU (D. Conn.) (below, **Appendix A**).

[28] *Yost v. United States*, No. 3:13-cv-02509-W-DHB (S.D. Cal.).

[29] *Migrant Justice v. Wolf*, No. 5:18-cv-192 (D. Vt.), https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf.

[30] *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(b).

[31] *See* 8 C.F.R. § 214.14(c)(2)(i).

[32] *See* 8 C.F.R. § 214.14(a)(9).

[33] *See* 8 U.S.C. § 1101(a)(15)(U)(i)(III).

[34] *See id.*; 8 C.F.R. § 214.14(a)(3)(ii).

[35] *Cf., e.g., Villegas v. Metro. Gov't of Nashville*, 907 F. Supp. 2d 907 (M.D. Tenn. 2012) (granting plaintiff's motion to certify U Visa in § 1983 case); *Garcia v. Audubon Communities Mgmt.,*

the limited role that U Visa certifications play) and establish that the activity meets the elements of a qualifying crime.[36] In addition, while some assistance to law enforcement can also help, this requirement is a low bar and does not require the existence of an ongoing criminal investigation.[37]
    - You may also consider seeking certification directly from ICE, as it is a law enforcement agency. However, ICE may be reluctant to directly concede that it committed a qualifying offense against your client.

- **Motion to Reopen:** If your client's removal case must be reopened in order for them to obtain immigration relief, you may consider negotiating for the government to file a joint motion to reopen. This may be especially important if your client is time- or number-barred from filing a motion to reopen, since jointly filed motions to reopen are not subject to time or number limitations.[38] Note, however that even joint motions to reopen should state reasons why reopening is warranted.

- **Continuance:** If your client is awaiting a decision on a collateral petition for relief that would affect the outcome of their removal proceedings, you may consider negotiating for ICE to enter a joint motion for a continuance pending resolution of that matter. 8 C.F.R. § 1003.29 permits IJs to grant continuances for good cause shown.
    - Barriers: A 2018 attorney general decision placed significant limitations on IJ discretion to grant continuances, explaining that the good cause standard does not permit IJs to grant continuances "for any reason or no reason at all" and stating that the primary factors in whether to grant a continuance are (1) the likelihood that collateral relief will be granted and (2) whether that relief will affect the outcome of removal proceedings.[39] While DHS's position remains a relevant, secondary factor to be considered in deciding whether to grant a continuance, this decision instructs IJs not to treat DHS's consent to a continuance as controlling.[40]

- **Withdrawal of Appeal:** If ICE has filed an appeal from an IJ grant of relief, the agency may agree to withdraw the appeal as a condition of settlement. If an appeal to the BIA is withdrawn, the underlying decision in the case becomes final "to the same extent as if no appeal was taken."[41]

LLC, No. CIV.A. 08-1291, 2008 WL 1774584 (E.D. La. Apr. 15, 2008) (granting plaintiffs' motion to certify U Visa in Trafficking Victims Protection Act and Fair Labor Standards Act case).

[36] *See Villegas*, 907 F. Supp. 2d at 912.

[37] *See Garcia*, 2008 WL 1774584, at *3.

[38] 8 C.F.R. § 1003.23(b)(4)(iv).

[39] *Matter of L-A-B-R-*, 27 I&N Dec. 405, 406 (A.G. 2018).

[40] *Id.* at 408, 416.

[41] 8 C.F.R. § 1003.4.

- **Release from Detention or Relaxation of Orders of Supervision:** ICE has broad discretion over whether to detain noncitizens or release them on bond or parole, both during the pendency of their proceedings and after the 90-day removal period has lapsed.[42] If your client is detained, you should consider seeking an agreement to release them from detention.
    - ICE also has broad discretion over the terms of orders of supervision under which noncitizens are released from custody, such as GPS ankle monitors or ICE or ISAP check-ins.[43] You may consider negotiating for less burdensome or restrictive release conditions.

- **Be creative!** You should evaluate your client's case and negotiate for relief that is best tailored to their needs. This is not intended to be an exhaustive list, so if a form of relief is not mentioned here, it's only because we haven't thought of it.

III. Concluding Notes

Negotiating FTCA settlement terms that include immigration relief requires an evolving strategy. Before entering into such negotiations, practitioners should consult their clients; think creatively about possible relief; and carefully research the law governing the relief they seek in order to determine the scope of ICE's authority to grant it or consent to it.

Attorneys at ASAP and NIPNLG are available to respond to questions on these issues, and welcome information about any successful settlements for immigration relief. Please contact jmeyers@nipnlg.org and/or advisories@asylumadvocacy.org.

[42] *See generally Nielsen v. Preap*, 139 S. Ct. 954, 959 (2019) (describing ICE's authority to detain during the pendency of removal proceedings); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (describing constitutional limits on ICE's discretionary authority to detain noncitizens beyond the 90-day removal period); *Matter of M-S-*, 27 I&N Dec. 509, 516-17 (A.G. 2019) (describing ICE's discretionary authority to parole noncitizens detained under 8 U.S.C. § 1225(b)).

[43] *See* 8 C.F.R. §§ 212.5(d), 241.5(a).

Appendices: Sample Settlement Agreements

Appended here are relevant portions of prior settlement agreements incorporating immigration relief.

- **Appendix A:** *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU (D. Conn., filed Oct. 28, 2009). This settlement agreement includes, as exhibits, several joint motions for immigration relief, including:
    - Joint motion to file amended pleadings and administratively close respondent's removal proceedings;
    - Joint motion to reopen and terminate removal proceedings;
    - Government motion to withdraw petition for review as moot;
    - Joint motion to terminate removal proceedings.
- **Appendix B:** *Villanueva-Ojanama v. United States*, No. 3:13-cv-1617-RNC (D. Conn., filed Nov. 15, 2013). This settlement agreement includes, as an exhibit, a joint motion to terminate removal proceedings with prejudice.
- **Appendix C:** *Franco-Gonzalez v. Napolitano*, No. 2:10-cv-02211, ECF No. 678 (C.D. Cal., Dec. 20, 2013). This settlement agreement as to one plaintiff includes a proposed joint motion to grant asylum.

Additionally, the settlement agreement in *Migrant Justice v. Wolf*, No. 5:18-cv-192 (D. Vt., filed Nov. 14, 2018), is available online at https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf. The *Migrant Justice* settlement includes a stipulation that plaintiffs receive deferred action for five years.

Appendix A

Settlement Agreement, *Diaz-Bernal v. Myers*, No. 3:09-cv-1734-SRU
(D. Conn., filed Oct. 28, 2009)

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

It is hereby stipulated by and between the undersigned Plaintiffs and the United States of America, by and through their respective attorneys, as follows:

I. Preamble

A. This Settlement Agreement and Release of all Claims ("Settlement Agreement") is made and entered into by Eduardo Diaz-Bernal, Florente Baranda-Barreto, Edilberto Cedeño-Trujillo, Washington Colala-Peñarreta, Julio Sergio Paredes-Mendez, Cristobal Serrano-Mendez, Jose Solano-Yangua, Silvino Trujillo-Mirafuentes, Gerardo Trujillo-Morellano, Amilcar Soto Velasquez and Edinson Yangua-Calva (collectively "Plaintiffs"), and the United States of America ("United States"). Plaintiffs and the United States are the "Parties" to this Settlement Agreement.

B. This Settlement Agreement arises out of the following actions:

1. *Diaz-Bernal, et al. v. Myers, et al.*, No. 3:09-cv-1734-SRU (D. Conn.), hereinafter "the Lawsuit";
2. *Diaz-Bernal, et al. v. Myers, et al.*, No. 11-172 (2d Cir.), hereinafter "the Appeal";
3. *Paredes v. Holder*, No. 11-0017 (2d Cir. filed Jan. 3, 2011); *Serrano-Mendez v. Holder*, No. 11-0009 (2d Cir. filed Jan. 3, 2011);
4. *In re Edinzon Yangua-Calva,* [redacted]; *In re Jose Efrain Solano-Yangua,* [redacted]; *In re Soto-Velasquez,* [redacted]; *In re Paredes-Mendez,* [redacted]; *In re Serrano-Mendez,* [redacted].

C. The Parties enter into this agreement pursuant to 28 U.S.C. § 2677.

II. Terms

General Terms

A. In consideration for the settlement and release of all claims, Plaintiffs agree to accept the terms and conditions of this Settlement Agreement, the United States agrees to pay Plaintiffs a total cash sum of three-hundred fifty-thousand dollars ($350,000.00) ("Settlement Amount"), and Immigration and Customs Enforcement ("ICE") agrees to provide Plaintiffs the immigration-related benefits described in Paragraphs II.G through II.L ("Immigration Benefits"). Of the total Settlement Amount, Plaintiff Eduardo Diaz-Bernal will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Florente Baranda-Barreto will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Edilberto Cedeño-Trujillo will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Washington Colala-Peñarreta will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Julio Sergio Paredes-Mendez will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Cristobal Serrano-Mendez will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Jose Solano-Yangua will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Silvino Trujillo-Mirafuentes will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Gerardo Trujillo-Morellano will receive thirty-one thousand eight-hundred eighteen dollars and eighteen cents ($31,818.18). Amilcar Soto Velasquez will receive thirty-one thousand eight-hundred eighteen dollars and nineteen cents ($31,818.19). Edinson Yangua-Calva will receive thirty-one thousand eight-hundred eighteen dollars and nineteen cents ($31,818.19).

B. Plaintiffs agree to accept that the terms and conditions of this Settlement Agreement, including the Settlement Amount and Immigration Benefits, shall be in full settlement,

satisfaction and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of the Lawsuit, including but not limited to any claims for wrongful death, for which Plaintiffs or their guardians, heirs, executors, administrators, attorneys, or assigns, and each of them, now have or may hereafter acquire against the United States, its attorneys, agents, servants, assigns, and employees, including any claims that could have been or could be brought under the Federal Tort Claims Act or *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The release of claims described in the previous sentence shall not be interpreted to limit Plaintiff Yangua-Calva's right to reinstate his motion to suppress and terminate under the conditions described in Paragraph II.G.1 of this Settlement Agreement. Such right to reinstate Plaintiff Yangua-Calva's motion to suppress and terminate shall constitute the sole exception to his release of claims described in this Paragraph. Plaintiffs and their guardians, heirs, executors, administrators, attorneys, or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its attorneys, agents, servants, assigns, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims arising from the subject matter of the Lawsuit by Plaintiffs or their guardians, heirs, executors, administrators, attorneys or assigns against any third party or against the United States, including claims for wrongful death.

C. This Settlement Agreement is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its attorneys, agents, servants, assigns, or employees, and it is specifically denied that they are liable to the Plaintiffs. In settling, Plaintiffs do not concede that the United States, its attorneys, agents, servants, assigns, or

employees are not liable under the claims brought by Plaintiffs in this Lawsuit. This settlement is entered into by the Parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

D. It is also agreed, by and among the Parties, that the respective Parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the Plaintiffs will be paid exclusively out of the Settlement Amount and not in addition thereto.

E. It is also understood by and among the Parties that pursuant to 28 U.S.C. § 2678, attorney's fees for services rendered in connection with this action shall not exceed 25 per centum of the amount of the compromise Settlement Amount.

Immigration Benefits

Plaintiffs whose immigration removal proceedings have been terminated

F. The immigration proceedings of Plaintiffs Diaz-Bernal, Baranda-Barreto, Cedeño-Trujillo, Trujillo-Mirafuentes, and Trujillo-Morellano, already have terminated. They will receive money only, pursuant to Paragraph II.A, and no Immigration Benefits under this Settlement Agreement.

Plaintiffs who have pending immigration removal proceedings

G. ICE agrees to grant Plaintiff Yangua-Calva deferred-action status for a period of four (4) years as described below in Paragraphs II.I.1-4. Upon granting of deferred-action status, Plaintiff Yangua-Calva may then apply to U.S. Citizenship and Immigration Services ("USCIS") for employment authorization while his deferred-action status is in effect as described below in Paragraph II.I.4. In addition, ICE agrees to administratively close his pending immigration proceedings as described below in Paragraph II.G.1:

Plaintiff Yangua-Calva

1. Plaintiff Yangua-Calva will: file amended pleadings with the Immigration Judge ("IJ") conceding the allegations and admitting the charge of removability as

contained in the Notice to Appear dated on or about June 6, 2007; withdraw his motion to suppress and terminate without prejudice; and, joined by counsel for the Department of Homeland Security ("DHS"), move to administratively close the proceedings. In the event that DHS recalendars Plaintiff Yangua-Calva's administratively closed removal proceedings based on an arrest under Paragraph II.K of this Settlement Agreement or because his deferred-action status has expired, Plaintiff Yangua-Calva agrees that he will not invoke or rely on his motion to suppress and terminate, to be withdrawn pursuant to this paragraph. Counsel for DHS agrees that in the event that the IJ does not administratively close Plaintiff Yangua-Calva's proceedings, it will join Plaintiff Yangua-Calva in a motion to withdraw his amended pleadings and to reinstate his motion to suppress and terminate. Counsel for DHS agrees that in the event that either deferred action or employment authorization is not granted to Plaintiff Yangua-Calva, it will join Plaintiff Yangua-Calva in a motion to recalendar, at which time Plaintiff Yangua-Calva may withdraw his amended pleadings and reinstate his motion to suppress and terminate. The document to be filed pursuant to the first sentence of this Paragraph is attached hereto as Exhibit A.

2. If the relevant Parties comply with the procedures outlined above in Paragraph II.G.1 but the IJ fails to or declines to administratively close or recalendar Plaintiff Yangua-Calva's immigration proceedings, Plaintiffs may, in their sole discretion, void this Settlement Agreement.

3. Upon granting deferred-action status to Plaintiff Yangua-Calva, ICE agrees that it will cancel his outstanding immigration bond. The bond will be subject to re-

instatement if Plaintiff Yangua-Calva's case is recalendared for any reason under this Settlement Agreement.

H. ICE agrees to move to terminate with prejudice solely as to the information gathered on or about June 6, 2007 the removal proceedings of Plaintiffs Serrano-Mendez, Paredes-Mendez, Soto Velasquez, and Solano-Yangua as described below in Paragraphs II.H.1-2.

1. **Plaintiffs Serrano-Mendez and Paredes-Mendez**

Plaintiffs Serrano-Mendez and Paredes-Mendez and counsel representing DHS in administrative removal proceedings will file a joint motion at the Board of Immigration Appeals ("BIA") to reopen and to terminate each of their immigration removal proceedings with prejudice solely as to the information gathered on or about June 6, 2007. Within fourteen (14) calendar days of the BIA's grant of the joint motion to terminate the matter, Plaintiffs Serrano-Mendez and Paredes-Mendez will withdraw as moot their Petitions for Review pending in the U.S. Court of Appeals for the Second Circuit. The documents to be filed pursuant to this Paragraph are attached hereto as Exhibits B and C.

2. **Plaintiffs Soto Velasquez and Solano-Yangua**

Counsel representing DHS in administrative removal proceedings will file with the IJ a motion to terminate Plaintiffs Soto Velasquez's and Solano-Yangua's immigration removal proceedings with prejudice solely as to the information gathered on or about June 6, 2007. The documents to be filed pursuant to this Paragraph are attached hereto as Exhibit D.

3. If the Parties comply with the procedures outlined above in Paragraphs II.H.1-2, but either the BIA or IJ fails to or declines to reopen or terminate any of Plaintiffs Serrano-Mendez's, Paredes-Mendez's, Soto Velasquez's or Solano-Yangua's

ongoing immigration proceedings, Plaintiffs, in their sole discretion, may void this Settlement Agreement.

Deferred Action

I. ICE agrees that it will grant Plaintiffs Yangua-Calva and Colala-Peñarreta, for a period of four (4) years, "deferred-action" status, under the terms and conditions described below in Paragraphs II.I.1-4. "Deferred action" means ICE will exercise its exclusive prosecutorial discretion to not remove those Plaintiffs granted deferred action from the United States and that ICE will not initiate or seek to resume removal proceedings while those Plaintiffs have deferred-action status, except as specified in Paragraph II.K of this Settlement Agreement.

1. ICE agrees to notify Plaintiffs Yangua-Calva and Colala-Peñarreta in writing once it grants them deferred-action status.
2. The four-year period of deferred-action status for each Plaintiff begins to run on the date of ICE's notice granting each Plaintiff deferred-action status.
3. If ICE does not, in fact, initially grant at least four (4) years of deferred-action status, subject to the provisions listed in Paragraphs II.J and II.K hereto, to either Plaintiff listed in Paragraph II.I, Plaintiffs may, in their sole discretion, void this Settlement Agreement.
4. Upon granting deferred-action status to Plaintiff Yangua-Calva, he may apply to USCIS for employment authorization while his deferred-action status is in effect. Recognizing that Plaintiff Colala-Peñarreta currently has employment authorization, with an expiration date of March 1, 2012, Plaintiff Colala-Peñarreta may apply for renewal of employment authorization while his deferred-action status is in effect. To obtain employment authorization, Plaintiff Yangua-Calva must complete a Form I-765 and submit the form to USCIS within five (5)

calendar days of receiving written notice from ICE that deferred-action status has been granted. If Plaintiff Yangua-Calva completes and timely submits a Form I-765 to USCIS upon an initial grant of deferred-action status, but USCIS fails to grant that Plaintiff's employment authorization within one-hundred twenty (120) calendar days of receiving the application, Plaintiffs may, in their sole discretion, void this Settlement Agreement.

Maintenance and Renewal of Deferred-Action Status

J. Plaintiffs Yangua-Calva and Colala-Peñarreta agree to report annually, in person, to the office of Enforcement and Removal Operations ("ERO"), for a review of their deferred-action status. These Plaintiffs must report to the ERO office at 450 Main Street, Hartford, Connecticut ("Hartford ERO"), subject to the provisions in the following two sentences. Plaintiffs may request permission from Hartford ERO at least ninety (90) calendar days in advance of the annual check-in to report to a different ERO office. Hartford ERO has sole discretion whether to grant a Plaintiff's request to report to a different ERO office, or to require the Plaintiff to report to Hartford ERO. The review of deferred-action status includes, but is not limited to, confirming the Plaintiff's current residential address and review of the Plaintiff's criminal history records. This annual review is separate and apart from any review of a Plaintiff's deferred-action status that may result from an arrest for criminal activity, as described in Paragraph II.K.

K. The Department of Homeland Security reserves the right to re-examine continued deferred-action status for a Plaintiff who is arrested for:

1) a felony; or,
2) a crime of driving while intoxicated or under the influence of alcohol or of prohibited substances; or,

3) any other crime for which a sentence of six (6) months or longer may be imposed that involves causing or threatening to cause personal injury to another person, or with extreme indifference to human life, creates a risk of personal injury to another person.

L. At the end of the four-year deferred-action period, any Plaintiff granted deferred action may apply for another grant of deferred action. The decision whether to grant further deferred action to a Plaintiff will be left in the sole, unreviewable discretion of ICE. If a Plaintiff chooses to apply for an additional period of deferred action, the Plaintiff must do so at least ninety (90) calendar days before the expiration of the four-year deferred-action period. If ICE decides not to extend deferred-action status for any Plaintiff, that Plaintiff agrees to depart the United States on or before the date his deferred-action status ends. These Plaintiffs further agree that they will not challenge any denial of a request for deferred action. This Settlement Agreement does not affect the ability of any Plaintiff to present himself for entry or admission into the United States, or to adjust or regularize his status, subsequent to the date of this Settlement Agreement, so long as he is authorized to do so under applicable United States law.

III. Additional Terms

A. Plaintiffs' counsel will tender to counsel for the United States a signed voluntary motion to dismiss, with prejudice, all claims asserted against all defendants in the Lawsuit, with each Party to bear its own costs, expenses, and fees. Counsel for the United States will hold in escrow the signed voluntary motion to dismiss until Plaintiffs' counsel notify counsel for the United States of receipt of the Settlement Amount, at which time Plaintiffs shall file with the District Court the voluntary motion to dismiss.

B. Upon the completion of the actions set forth in Paragraphs II.G, II.H and II.I, payment of the Settlement Amount will be made by Electronic Funds Transfer from the Treasury of the United States for three-hundred fifty-thousand dollars ($350,000.00) and made payable to the

client trust account of the Jerome N. Frank Legal Services Organization, Yale Law School. Plaintiffs' counsel will provide counsel for the United States with the necessary account and routing information under separate cover.

C. Plaintiffs' counsel will hold the Settlement Amount in escrow, and agree not to distribute any of the Settlement Amount, including costs, fees, and expenses, unless and until the District Court grants the voluntary motion to dismiss with prejudice described in Paragraph III.A. The voluntary motion to dismiss with prejudice filed in District Court shall be filed by Plaintiffs.

D. No other relief related to any Plaintiff's removal proceedings or immigration status is implied or guaranteed by this agreement. If there is a change in the law that affects any Plaintiff, nothing in this Settlement Agreement prevents him from applying for any status for which he would otherwise be eligible.

E. Within forty-five (45) calendar days of the District Court granting the voluntary motion to dismiss described in Paragraph III.A, counsel for appellants will move to voluntarily dismiss the Appeal with prejudice.

F. The Parties agree that this Settlement Agreement may be made public in its entirety, and the Plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

G. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event any Plaintiff is a minor or a legally incompetent adult, Plaintiffs must obtain Court approval of the settlement at their expense. Plaintiffs agree to obtain such approval in a timely manner: time being of the essence. Plaintiffs further agree that the United States may void this Settlement Agreement at its option in the event such approval is not obtained in a timely manner. In the event the United States voids the Settlement Agreement pursuant to the provision in the previous sentence, the United States will notify Plaintiffs in writing within fourteen (14) calendar

days. In the event Plaintiffs fail to obtain such Court approval, the entire Settlement Agreement and the compromise settlement are null and void.

H. In the event that Plaintiffs void this Settlement Agreement, they will notify Defendants in writing within fourteen (14) calendar days.

I. In the event this Settlement Agreement is terminated or it is declared null and void pursuant to the provisions hereof, none of this Settlement Agreement nor any of its terms, nor any negotiations, discussions or proceedings among the Parties hereto or their representatives or agents with respect to the subject matter of this Settlement Agreement shall be offered or received in evidence, and none of such Settlement Agreement, terms, negotiations, discussions or proceedings shall be admissible for any purpose in any trial, appeal or other proceedings in connection with this or any other action involving the facts giving rise to this Lawsuit or giving rise to past or pending removal proceedings against the Plaintiffs.

J. It is contemplated that this Settlement Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

K. Nothing in this Settlement Agreement shall be construed as a concession of removability or alienage by any Plaintiff.

L. This Settlement Agreement embodies the entire agreement of the Parties in this matter, and no oral agreement entered into at any time or any written agreement entered into prior to the execution of this Settlement Agreement shall be deemed to exist, or to bind the Parties hereto or to vary the terms or conditions contained herein.

EXHIBIT A

Michael J. Wishnie, Esq.
Muneer I. Ahmad, Esq.
The Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
(203) 432-4800

Attorney for Respondent

Name
Department of Homeland Security
Address

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
HARTFORD, CONNECTICUT

IN THE MATTER OF:	
YANGUA-CALVA, Edinzon Fernando	File No. [redacted]
In removal proceedings	

JOINT MOTION TO FILE AMENDED PLEADINGS, WITHDRAW MOTION TO SUPPRESS, AND ADMINISTRATIVELY CLOSE RESPONDENT'S REMOVAL PROCEEDINGS

Respondent Yangua-Calva and the U.S. Department of Homeland Security, through their undersigned counsel, jointly move the Court for leave for Respondent to file amended pleadings conceding the allegations and admitting the charge of removability, withdraw his motion to suppress without prejudice, and administratively close the case. Respondent's proposed amended pleadings are attached here as Exhibit A. Respondent's agreement to file amended pleadings and withdraw the motion to suppress is contingent upon the Court's grant of the joint motion to administratively close Respondent's case.

Respectfully submitted,

[signature blocks]

EXHIBIT B

Michael J. Wishnie, Esq.
Muneer I. Ahmad, Esq.
The Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
(203) 432-4800

Attorney for Respondent

Name
Department of Homeland Security
Address

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

IN THE MATTER OF:	
PAREDES-MENDEZ, Julio Sergio	File No. [redacted]
In removal proceedings	

JOINT MOTION TO REOPEN AND TO TERMINATE REMOVAL PROCEEDINGS AGAINST RESPONDENT

Respondent Paredes-Mendez and the U.S. Department of Homeland Security, through their undersigned counsel, jointly move the Board of Immigration Appeals to reopen and to terminate Respondent's case, with prejudice solely as to the information gathered on or about June 6, 2007.

Respectfully submitted,

[signature blocks]

EXHIBIT C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Julio Sergio PAREDES-MENDEZ, *Petitioner*, v. Eric H. HOLDER, United States Attorney General; *Respondent.*	**MOTION TO WITHDRAW PETITION FOR REVIEW AS MOOT** Case No. 11-17 File No. [redacted] Month X, 2011

MOTION TO WITHDRAW PETITION FOR REVIEW AS MOOT

Petitioner Paredes-Mendez, by and through his attorney and pursuant to Rules 27 and 32 of the Federal Rules of Appellate Procedure and Rule 27.1 of this Court's local rules, moves this Court to withdraw his Petition for Review ("PFR"), filed on January 3, 2011 as moot.

In support of this Motion, Petitioner states through counsel as follows:

1. On June 11, 2007, DHS filed a Notice to Appear in the Hartford Immigration Court, charging Petitioner to be in violation of INA § 212(a)(6)(A)(i).
2. On November 30, 2007, Petitioner timely filed a motion to suppress evidence, which motion DHS opposed.
3. On May 1, 2009, the Immigration Judge ("IJ") in the case denied Petitioner's motion, and Petitioner timely appealed the denial to the Board of Immigration Appeals ("Board").
4. On December 6, 2010, the Board dismissed Petitioner's appeal.
5. On January 3, 2011, Petitioner timely filed a Petition for Review of the Board's dismissal of his appeal in the U.S. Court of Appeals for the Second Circuit. Briefing before the Court has not yet started.
6. Petitioner and the United States have entered into a settlement agreement in the civil case *Diaz-Bernal et al. v. Myers et al.*, No. 3:09cv1734 (SRU) (D. Conn. filed Oct. 28, 2009), in which Petitioner is a Plaintiff.

7. Pursuant to the settlement agreement in *Diaz-Bernal*, Petitioner and DHS jointly moved the Board to reopen and terminate Petitioner's case, and the Board granted the joint motion on DATE.

8. Accordingly, this petition for review is now moot.

9. Opposing counsel does not oppose this Motion and does not intend to file a response.

Therefore:

10. Petitioner moves to withdraw his now moot PFR pending before this Court.

Respectfully submitted,

_____/s/_____

Michael J. Wishnie, Supervising Attorney
Muneer I. Ahmad, Supervising Attorney
Jason Glick, Law Student Intern
Laura Huizar, Law Student Intern
Mark Pedulla, Law Student Intern
Trudy Rebert, Law Student Intern
Matthew Vogel, Law Student Intern
Jerome N. Frank Legal Services Organization
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Attorney for Petitioner

EXHIBIT D

Michael J. Wishnie, Esq.
Muneer I. Ahmad, Esq.
The Jerome N. Frank Legal Services Organization
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P.O. Box 209090
New Haven, CT 06520-9090
(203) 432-4800

Attorney for Respondent

Name
Department of Homeland Security
Address

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
HARTFORD, CONNECTICUT

IN THE MATTER OF:	
SOLANO-YANGUA, Jose Efrain	File No. [redacted]
In removal proceedings	

JOINT MOTION TO TERMINATE REMOVAL PROCEEDINGS AGAINST RESPONDENT

Respondent Solano-Yangua and the U.S. Department of Homeland Security, through their undersigned counsel, jointly move the Court to terminate Respondent's case, with prejudice solely as to the information gathered on or about June 6, 2007.

Respectfully submitted,

[signature block]

Appendix B

Settlement Agreement, *Villanueva-Ojanama v. United States*, No. 3:13-cv-1617-RNC (D. Conn., filed Nov. 15, 2013)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

GABRIEL VILLANUEVA-OJANAMA and MANUEL SEBASTIAN CASTRO LARGO	:	
v.	:	C.A. No. 3:13cv1617 (RNC)
UNITED STATES OF AMERICA	:	

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

It is hereby stipulated by and between the undersigned Plaintiffs, Gabriel Villanueva-Ojanama and Manuel Sebastian Castro Largo, and the United States of America, by and through their respective attorneys, as follows:

I. Preamble

A. This Settlement Agreement and Release of All Claims ("Settlement Agreement") is made and entered into by Gabriel Villanueva-Ojanama, Manuel Sebastian Castro Largo (collectively "Plaintiffs"), and the United States of America ("United States"). Plaintiffs and the United States are "Parties" to this Settlement Agreement.

B. This Settlement Agreement arises out of the following actions:

1. *Villanueva-Ojanama et al v. United States*, No. 3:13-cv-01617 (D. Conn.) ("the Lawsuit");
2. *In the Matter of Manuel Sebastian Castro Largo* ([redacted], currently pending in Immigration Court in Hartford, CT; and *In the Matter of Gabriel Villanueva-Ojanama* [redacted]), currently pending before the Board of Immigration Appeals (collectively "Immigration Proceedings"); and

3. ICE FOIA Case No. 2014FOIA1465, submitted by Mr. Castro Largo ("FOIA Request").

C. The Parties enter into this agreement pursuant to 28 U.S.C. § 2677.

II. Terms

General Terms

A. In consideration for the settlement and release of all claims, Plaintiffs agree to accept the terms and conditions of this Settlement Agreement, and the United States agrees to provide Plaintiffs the immigration-related benefits described in Paragraph E ("Immigration Benefits").

B. Plaintiffs agree to accept that the terms and conditions of this Settlement Agreement, including Immigration Benefits, shall be in full settlement, satisfaction and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of the Lawsuit, including but not limited to any claims for wrongful death, for which Plaintiffs or their guardians, heirs, executors, administrators, attorneys, or assigns, and each of them, now have or may hereafter acquire against the United States, its attorneys, agents, servants, assigns, and employees, including any claims that could have been or could be brought under the Federal Tort Claims Act or *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

C. This Settlement Agreement is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its attorneys, agents, servants, assigns, or employees, and it is specifically denied that they are liable to the Plaintiffs. In settling, Plaintiffs do not concede that the United States, its attorneys, agents, servants, assigns,

or employees are not liable under the claims brought by Plaintiffs in the Lawsuit. This settlement is entered into by the Parties for the purpose of compromising claims brought by Plaintiffs under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

D. It is also agreed, by and among the Parties, that the respective Parties will each bear their own costs, fees, and expenses.

Immigration Benefits

E. U.S. Immigration and Customs Enforcement ("ICE") agrees to move jointly with each Plaintiff to terminate the pending Immigration Proceedings of Plaintiffs Villanueva-Ojanama and Castro Largo with prejudice solely as to the underlying conduct that led to the commencement of these proceedings. Plaintiff Castro Largo and counsel representing ICE in administrative removal proceedings will file a joint motion with the Immigration Court in Hartford, CT, and Plaintiff Villanueva-Ojanama and counsel representing ICE will file a joint motion with the Board of Immigration Appeals ("BIA"), to terminate each of the Immigration Proceedings with prejudice solely as to the underlying conduct that initiated these pending removal proceedings. The documents to be filed pursuant to this paragraph are attached hereto as Exhibit A.

F. If the Parties comply with the procedures outlined above in Paragraph E, but either the BIA or Immigration Judge fails to or declines to terminate removal proceedings against either Plaintiff Villanueva-Ojanama or Plaintiff Castro Largo, then that Plaintiff, in his sole discretion, may void this Settlement Agreement as to himself only.

Federal Torts Claims Act Complaint

G. Plaintiffs agree to withdraw the Lawsuit with prejudice. Within fourteen (14) calendar days of the latter of (1) the Immigration Judge's grant of the joint motion to terminate immigration proceedings against Mr. Castro Largo and (2) the BIA's grant of the joint motion to

terminate immigration proceedings against Mr. Villanueva-Ojanama, Plaintiffs will withdraw the Lawsuit. The document to be filed pursuant to this paragraph is attached hereto as Exhibit B.

FOIA Request

H. Mr. Castro Largo agrees not to administratively appeal, litigate, or otherwise contest ICE's response to his FOIA Request.

III. Additional Terms

A. No other relief related to any Plaintiff's removal proceedings or immigration application, benefit, petition or status is implied or guaranteed by this agreement. If there is a change in the law that affects any Plaintiff, nothing in this Settlement Agreement prevents him from applying for any benefit or status for which he would otherwise be eligible.

B. The Parties agree that this Settlement Agreement may be made public in its entirety, and the Plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

C. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

D. In the event that a Plaintiff voids this Settlement Agreement due to the failure of the Immigration Judge or BIA to terminate removal proceedings, that Plaintiff will notify Defendants in writing within (14) calendar days.

E. In the event this Settlement Agreement is terminated or it is declared null and void pursuant to the provisions hereof, none of this Settlement Agreement nor any of its terms, nor any negotiations, discussions or proceedings among the Parties hereto or their representatives or agents with respect to the subject matter of this Settlement Agreement shall be offered or received in evidence, and none of such Settlement Agreement, terms, negotiations, discussions or proceedings shall be admissible for any purpose in any trial, appeal or other proceedings in

connection with this or any other action involving the facts giving rise to pending removal proceedings against the Plaintiffs.

F. It is contemplated that this Settlement Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

G. Nothing in this Settlement Agreement shall be construed as a concession of removability or alienage by any Plaintiff.

H. This Settlement Agreement embodies the entire agreement of the Parties in this matter and no oral agreement entered into at any time or written agreement entered into prior to execution of this Settlement Agreement shall be deemed to exist, or to bind the Parties hereto or to vary the terms or conditions contained herein.

EXHIBIT A

Michael J. Wishnie, Esq.
Muneer I. Ahmad, Esq.
Jerome N. Frank Legal Services Organization
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P.O. Box 209090
New Haven, CT 06520-9090
(203) 432-4800

Attorney for Respondent

Name
Department of Homeland Security
Address

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)	**NOT DETAINED**
	)	
Gabriel VILLANUEVA-OJANAMA,	)	
Respondent	)	[redacted]
	)	
In Removal Proceedings.	)	
	)	

JOINT MOTION TO TERMINATE REMOVAL PROCEEDINGS AGAINST RESPONDENT

Respondent Gabriel Villanueva-Ojanama and the U.S. Department of Homeland Security, through undersigned counsel, jointly move the Board of Immigration Appeals to terminate Respondent's case, with prejudice solely as to the underlying conduct that led to the commencement of these pending removal proceedings.

Respectfully submitted,

Dated: [MONTH] ____, 2014

Kendall Hoechst, Law Student Intern
Kate Mollison, Law Student Intern
Temidayo Odusolu, Law Student Intern
Muneer I. Ahmad, Esq., Supervising Attorney
Michael J. Wishnie, Esq., Supervising Attorney
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(203) 432-4800

COUNSEL FOR RESPONDENT

John P. Marley
Senior Attorney
Immigration & Customs Enforcement
Hartford, Connecticut

CERTIFICATE OF SERVICE

This is to certify that on [MONTH] ___, 2014, a true and correct copy of the foregoing Joint Motion to Terminate Removal Proceedings Against Respondent was sent via certified mail to the Office of the Chief Counsel, Immigration and Customs Enforcement, U.S. Department of Homeland Security, at Room 483, 450 Main Street, Hartford, CT 06103.

Michael J. Wishnie, Esq.
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090

COUNSEL FOR RESPONDENT

Appendix C

Settlement Agreement, *Franco-Gonzalez v. Napolitano*, No. 2:10-cv-02211, ECF No. 678 (C.D. Cal., Dec. 20, 2013).

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is made and entered into by and between the following parties to litigation in *Franco-Gonzalez, et al. v. Holder, et al.*, No. 10-2211 (C.D. Cal.) ("the Class Action"): Plaintiff [redacted] by and through his guardian [redacted] ("Petitioner"). Defendants ("United States"), Eric H. Holder, Jr., Attorney General; Thomas G. Snow, Acting Director of the Executive Office of Immigration Review; Janet Napolitano, Secretary of Homeland Security; John Morton, Assistant Secretary of U.S. Immigration and Customs Enforcement; and Timothy S. Robbins, Field Office Director for the Los Angeles District of U.S. Immigration and Customs Enforcement.

General Terms

1. In consideration for the settlement and release of all claims, Petitioner agrees to accept the terms and conditions of this Agreement; and ICE agrees to jointly move with Petitioner before the Immigration Court to grant Petitioner's application for asylum as described in Paragraphs 5 through 9 ("Immigration Relief").

2. This Agreement is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its attorneys, agents, servants, assigns, or employees, and it is specifically denied that they are liable to Petitioner. In settling, Petitioner does not concede that the United States, its attorneys, agents, servants, assigns, or employees are not liable under the individual claims brought by Petitioner in the Class Action. This settlement is entered into by and between the Parties for the purpose of compromising disputed

[1] At his expense, Petitioner's counsel will seek the Court's appointment of Petitioner's brother, [redacted] as the Petitioner's guardian and will further seek the Court's approval of this Agreement.

claims under the Immigration and Nationality Act, Fifth Amendment of the United States Constitution, and the Federal Tort Claims Act, and avoiding the expenses and risks of further litigation.

3. Petitioner agrees to accept that the terms and conditions of this Agreement, including the Immigration Relief, shall be in full settlement, satisfaction and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen injuries, and the consequences thereof, resulting, and to result, from the subject matter of the Petitioner's detention in ICE custody from April 12, 2005 to March 31, 2010, as well as any subsequent electronic monitoring, including, but not limited to, any claims for false imprisonment, intentional infliction of emotional distress, abuse of process, malicious prosecution, or prolonged unlawful detention for which Petitioner or his guardians, heirs, executors, administrators, attorneys, or assigns, and each of them, now have or may hereafter raise against the United States, its attorneys, agents, servants, assigns, and employees, including any claims that have been or could be brought under the Immigration and Nationality Act, Fifth Amendment of the United States Constitution, Federal Tort Claims Act ("FTCA"), or *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

4. Petitioner and his guardians, heirs, executors, administrators, attorneys, or assigns further agree to release and hold harmless the United States of America, its attorneys, agents, servants, assigns, and employees for any and all such claims, demands, rights, and causes of action, including, but not limited to, Petitioner's claims under the FTCA, *Franco-Gonzalez v. United States*, No. 12-1912 (C.D. Cal.) ("the FTCA lawsuit"), that are incident to or resulting from further litigation or the prosecution of claims arising from the subject matter of the Petitioner's detention in ICE custody from April 12, 2005 to March 31, 2010, as well as any subsequent electronic monitoring. Petitioner further agrees not to file a new

complaint, or re-file the original complaint, in the FTCA lawsuit or to file any other cause of action or claim relating to Petitioner's claim under the FTCA, which the United States District Court for the Central District of California dismissed without prejudice on March 11, 2013.

Immigration Relief

5. Upon completing all required background checks pursuant to 8 U.S.C. § 1158(d)(5)(A)(i) and 8 C.F.R. § 1003.47, ICE will jointly move with Petitioner before the Immigration Court to grant asylum in Petitioner's administrative removal proceedings. The Parties will file the Joint Motion to Grant Asylum attached hereto as Exhibit A.

6. If the Parties comply with the procedure outlined above in Paragraph 5 but the Immigration Court denies Petitioner's application for asylum, Petitioner may, in his sole discretion, void this Agreement.

7. If the Immigration Court grants the Petitioner's application for asylum, the Petitioner's counsel shall file with the District Court a voluntary motion to dismiss, with prejudice, all pending individual claims asserted against all defendants by Petitioner in the Class Action, including the Sixth and Seventh Causes of Action contained in the Third Amended Complaint. Petitioner's counsel will file the Motion to Dismiss With Prejudice attached hereto as Exhibit B within seven (7) days of the Immigration Court granting his application for asylum.

8. No other relief relating to Petitioner's administrative removal proceedings or immigration status is explicitly or implicitly conferred or granted by this Agreement.

9. This Agreement is in no way intended to be, nor should be construed as, concurrence or endorsement by ICE with or of any arguments and theories that the Petitioner's counsel has advanced, or may advance, in Petitioner's administrative removal proceedings. The Joint Motion to Grant Asylum, and any other positions ICE takes concerning the Petitioner's application for asylum, shall have no

precedential effect, shall not bind, and shall not be cited as authority in any other administrative removal proceedings or judicial litigation.

Additional Terms

10. The persons signing this Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

11. Petitioner agrees that the United States may void this Agreement at its option in the event the United States determines that Petitioner committed an offense that was not disclosed or known to ICE at the time the Parties intend to file the Joint Motion to Grant Asylum pursuant to Paragraph 5 or prior to the Immigration Court granting the Petitioner's application for asylum pursuant to Paragraph 7. In the event the United States voids the Agreement pursuant to this Paragraph, the United States will notify Petitioner in writing within fourteen (14) calendar days.

12. In the event that Petitioner voids this Agreement pursuant to Paragraph 6, Petitioner will notify Defendants in writing within fourteen (14) calendar days.

13. In the event this Agreement is terminated or it is declared null and void pursuant to the provisions herein, none of this Agreement nor any of its terms, nor any negotiations, discussions or proceedings among the Parties hereto or their representatives or agents with respect to the subject matter of this Agreement shall be offered or received in evidence, and none of such Agreement, terms, negotiations, discussions or proceedings shall be admissible for any purpose in any trial, appeal or other proceedings in connection with this or any other action involving the facts giving rise to the Class Action or the FTCA lawsuit, or giving rise to past or pending removal proceedings against Petitioner.

14. This Agreement embodies the entire agreement of the Parties in this matter, and no oral agreement entered into at any time or any written agreement entered into prior to the execution of this Agreement shall be deemed to exist, or to bind the Parties hereto or to vary the terms or conditions contained herein.

Dated: December 18, 2013

AHILAN T. ARULANANTHAM
Counsel for Plaintiffs-Petitioners

Dated: December 18, 2013

JEFFREY ROBINS
Counsel for Defendants-Respondents

Dated: December 16, 2013

[redacted]
Plaintiff-Petitioner

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

In the Matter of [redacted]	File No. [redacted]
In removal proceedings	

Immigration Judge Arlene E. Dorfman

Next Hearing: February 20, 2014

JOINT MOTION TO GRANT ASYLUM

The U.S. Department of Homeland Security ("Department") and the respondent, through counsel, (hereinafter "the parties"), respectfully move the Immigration Court to adjudicate the respondent's pending application for relief in the form of asylum, as follows:

The parties agree that "sufficient safeguards are in place to proceed with Respondent's removal proceedings." IJ Removal Proceedings Decision at 2 (June 18, 2013). Further, the parties agree that the respondent is eligible for asylum and merits a grant of asylum as a matter of discretion.[1]

The Department advises that all required checks have been completed pursuant to 8 U.S.C. § 1158(d)(5)(A)(i) and 8 C.F.R. § 1003.47, and that they will remain current until 4/30/14.

Accordingly, the parties respectfully request that the Immigration Court grant the respondent's application for asylum.

Respectfully submitted,

_____
Jillian Woods
Senior Attorney

_____
Talia Inlender, Esquire
Counsel for the respondent

[1] The Department's ultimate position on the respondent's application for asylum is based upon its independent review of the totality of the evidence in this specific case, and in the exercise of its prosecutorial discretion. Its position should not necessarily be interpreted as agreement with any arguments and theories that the respondent's counsel may have advanced.