IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*,

Plaintiffs,

v.

U.S. Department of Homeland Security, *et al.*,

Defendants.

Civil Action No.
8:19-CV-01944-SAG

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND TO AMEND THE CLASS DEFINITION

The parties respectfully request that the Court preliminarily approve the Settlement Agreement; amend the Class Definition; approve the Class Notice; direct that notice be provided to the Class as proposed in section IV(E) of the Settlement Agreement; and schedule a Fairness Hearing. The grounds for this Motion are set forth more fully in the parties' Memorandum In Support, submitted herewith.

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J.O.P., *et al.*, **Plaintiffs,** **v.** **U.S. Department of Homeland Security, *et al.*,** **Defendants.**	**Civil Action No. 8:19-CV-01944-SAG**

MEMORANDUM IN SUPPORT OF THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND TO AMEND THE CLASS DEFINITION

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I. INTRODUCTION

The parties jointly seek preliminary approval of the class action settlement (Exhibit 1, "Settlement Agreement") of the claims brought by Plaintiffs on behalf of the certified class challenging immigration policies related to asylum protections for unaccompanied children ("UCs"),[1] approval of the proposed plan for providing notice of the Settlement Agreement to class members, and amendment of the class definition. The Settlement Agreement, if approved, will resolve the claims of the Plaintiffs and the certified class related to policies reflected in a U.S. Citizenship and Immigration Services' ("USCIS") May 31, 2019 memorandum, titled "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children" ("2019 Redetermination Memo"), which changed how USCIS would implement certain asylum-related protections provided to unaccompanied children under the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA").

Under a policy issued on May 28, 2013, USCIS exercised initial jurisdiction over asylum applications filed by applicants in removal proceedings whom DHS had previously determined to be unaccompanied children. USCIS accepted initial jurisdiction over the asylum application even if the individual turned 18 or reunified with a parent or legal guardian before they filed the application. USCIS would also hold such applications exempt from the one-year filing deadline that generally applies to asylum applications. *See* 8 U.S.C. § 1158(a)(2)(E). On May 31, 2019, USCIS modified its policy and announced that, effective in 30 days, new and pending asylum

[1] The terms "unaccompanied children" and "unaccompanied child," as used herein, refer to "unaccompanied alien children," defined at 6 U.S.C. § 279(g)(2) as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." The Settlement Agreement also uses the same definition. Ex. 1, II(U).

applications of those with unaccompanied child determinations previously made by DHS upon encounter would be subject to additional factual inquiry to confirm that the child still met the statutory UC definition at the time of filing, a more restrictive approach. The May 2019 policy also required USCIS to reject jurisdiction over an asylum claim if an immigration court concluded, based on its own factual findings, that USCIS lacked jurisdiction. Those applicants who were found to no longer meet the definition of a UC would be subject to a one-year filing deadline and required to present their asylum claims to the immigration judge in an adversarial court hearing in the first and only instance.

The Settlement Agreement, if approved, will provide relief to class members, including by requiring USCIS to exercise initial jurisdiction over class members' asylum applications and adjudicate the applications on the merits, and to hold such applications exempt from the one-year deadline. Under the agreement, USCIS will not defer to an immigration judge's finding that a class member does not qualify for USCIS' initial jurisdiction under the TVPRA. USCIS will also retract any adverse jurisdictional determinations rendered on or after June 30, 2019 that merit retraction under the process described in the Settlement Agreement.

The Settlement Agreement provides relief to the class and is fair, reasonable, and adequate, and therefore warrants preliminary approval. The Settlement Agreement is the product of extensive arm's-length negotiations between experienced and informed counsel under Court supervision. Accordingly, the parties respectfully request that the Court: (1) preliminarily approve the proposed Settlement Agreement; (2) amend the class definition as specified in the Settlement Agreement; (3) order that the proposed class notice (Ex. C of the Settlement Agreement) be provided to the class in accordance with the Settlement Agreement; and (4) schedule a Fairness Hearing.

II. NATURE AND BACKGROUND OF CASE

A. Factual Background

Effective June 10, 2013, USCIS policy was to exercise its statutory initial jurisdiction over asylum applications filed by applicants in removal proceedings who had been determined an unaccompanied child upon encounter and that determination that had not been rescinded through an "affirmative act" by CBP, ICE, or ORR before the applicant filed the application. Even if an applicant reached the age of 18 or reunited with a parent or legal guardian before filing the application, USCIS would exercise initial jurisdiction over the applicant's asylum application based on the previous unaccompanied child determination. This policy was reflected in a May 28, 2013 memorandum, titled "Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children," known as the 2013 Kim Memo.

The 2019 Redetermination Memo changed how USCIS would implement those protections provided for unaccompanied children. Under the 2019 Redetermination Memo, if an applicant in removal proceedings had previously been determined to be an unaccompanied child, and had applied for asylum after turning 18 or reunifying with a parent or legal guardian, USCIS would decline jurisdiction over their asylum application. The 2019 Redetermination Memo also directed that in those circumstances, an applicant previously determined to be an unaccompanied child who no longer met the definition would be subject to the one-year deadline for filing asylum applications.

B. Procedural Background

On July 1, 2019, four named plaintiffs commenced this litigation for declaratory and injunctive relief, alleging that the USCIS policy changes reflected in the 2019 Redetermination Memo were adopted in violation of the Administrative Procedures Act ("APA"), the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

ECF No. 1. On August 2, 2019, the Court entered a temporary restraining order ("TRO"), enjoining and restraining Defendants, during the pendency of the litigation, from (i) applying the policy set forth in the 2019 Redetermination Memo to decline jurisdiction over asylum applications filed with USCIS by individuals previously determined to be unaccompanied children; and (ii) rejecting jurisdiction over the application of any unaccompanied child whose application would have been accepted under the 2013 USCIS policy predating the 2019 Redetermination Memo. ECF No. 55. The Court also ordered Defendant USCIS to retract any adverse jurisdictional decision already rendered in an individual case applying the 2019 Redetermination Memo and reinstate consideration of such case applying the prior policy, as set forth in the 2013 Kim Memo. ECF No. 54; ECF No. 55. On October 15, 2019, the Court granted Plaintiffs' motion for a preliminary injunction, enjoining Defendants from the foregoing conduct for the pendency of the litigation. ECF No. 71.

On November 13, 2019, Defendants filed a motion to dismiss Plaintiffs' claims, or in the alternative, for summary judgment. ECF No 73. On December 20, 2019, the named Plaintiffs filed an amended complaint that also alleged, *inter alia*, that USCIS had adopted an unlawful policy, as reflected in the 2019 Redetermination Memo, to defer to a determination by an Executive Office for Immigration Review ("EOIR") immigration judge that USCIS lacked jurisdiction over an asylum application if it was not an application filed by a UAC. ECF No. 91. Defendants filed a motion to dismiss the amended complaint on January 3, 2020. ECF No. 101. The Court denied both of Defendants' motions to dismiss on June 3, 2020. ECF No. 115.

On July 24, 2020, USCIS filed a certified administrative record with the Court, ECF No. 128, which it later amended on October 2, 2020, ECF No. 138. Plaintiffs asserted that significant deficiencies remained in the amended administrative record. *See* ECF No. 141.

On December 21, 2020, the Court entered an amended preliminary injunction, restraining Defendants from implementing that policy. Specifically, under the amended preliminary injunction, Defendants are

> (1) enjoined and restrained from relying on the policies set forth in the 2019 [Redetermination Memo] as a basis to decline jurisdiction over asylum applications of individuals previously determined to be unaccompanied alien children ("UACs"), to subject an asylum applicant to the one-year time limit for filing described at 8 U.S.C. § 1158(a)(2)(B), or for any other purpose; (2) enjoined and restrained from rejecting jurisdiction over any asylum application filed by Plaintiffs and members of the class whose applications would have been accepted under the 2013 Kim Memo; (3) enjoined and restrained from deferring to EOIR determinations in assessing jurisdiction over asylum applications filed by Plaintiffs and members of the proposed class; and (4) enjoined and restrained during the removal proceedings of any Plaintiff or member of the class (including EOIR proceedings before immigration judges and members of the Board of Immigration Appeals) from seeking denials of continuances or other postponements in order to await adjudication of an asylum application that has been filed with USCIS, from seeking EOIR exercise of jurisdiction over any asylum claim where USCIS has initial jurisdiction under the terms of the 2013 Kim Memo, or from otherwise taking a position in such individual's removal proceedings that, inconsistent with the 2013 Kim Memo, USCIS does not have initial jurisdiction over the individual's asylum application.

ECF No. 144 at 2.

On December 21, 2020, The Court also certified the following class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure:

> All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who filed an asylum application that was pending with the United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.

ECF No. 144 at 1. The Court also ordered USCIS to "retract any adverse decision rendered on or after June 30, 2019 that is based in whole or in part on any of the [enjoined] actions." *Id.* at 2.

On February 19, 2021, Defendants filed a notice of appeal from the Court's December 21, 2020 Order with the U.S. Court of Appeals for the Fourth Circuit. At Defendants' request, the appeal has been held in abeyance since July 12, 2021, and remains pending with the Fourth Circuit. Defendants have agreed to withdraw the appeal upon the final approval of the Settlement Agreement. Ex. 1, Settlement Agreement (hereinafter "Ex. 1") at IV(I).

On January 11, 2021, Plaintiffs filed a second amended complaint adding allegations that USCIS had adopted an unlawful policy or practice of treating recognitions or notations as to evidence that a child has turned 18 or been reunited with a parent or legal guardian as "affirmative acts" defeating USCIS initial jurisdiction under the 2013 Kim Memo. On March 4, 2021, Defendants agreed that USCIS will not make jurisdictional determinations that rely solely on an unaccompanied child redetermination noted in ICE or DHS systems as terminating a prior unaccompanied child determination, unless it documents that ICE placed the individual in ICE custody as an adult detainee, and that while this agreement remains in effect, USCIS will place on hold cases involving any other type of act that might qualify under the 2013 Kim Memo as an "affirmative act" before filing.

On December 21, 2020, the Court granted the parties' motion to stay the existing summary judgement briefing schedule in this case. ECF No. 144. Since early 2021, the parties have engaged in negotiations in hopes of reaching a settlement of some or all of Plaintiffs' claims.

C. History of Settlement Negotiations

The parties began to focus on settlement discussions in or about January 2021, and since that time engaged in at least 12 sessions, conducted virtually, to discuss possible settlement terms.

These sessions were attended by counsel for both sides and representatives of the Defendant agencies. The parties also exchanged drafts of a settlement agreement more than ten times since 2021.

The parties began settlement discussions in 2021 without the participation of a court-appointed mediator. During the ensuing year, the parties exchanged a series of revised drafts of proposed settlement terms. On January 13, 2022, the parties jointly requested that the Court refer the case to a magistrate judge for alternative dispute resolution, ECF No. 161, and on January 14, 2022, the Court referred the case to Hon. Judge Jillyn K. Schulze for alternative dispute resolution, ECF No. 163. The parties subsequently provided mediation statements to Judge Schulze and participated in remote mediation sessions under Judge Schulze's supervision, while continuing to exchange drafts of a settlement agreement.

On October 31, 2023, the case was assigned to Chief Magistrate Judge Timothy Sullivan for mediation. ECF No. 193. The parties subsequently exchanged further drafts of the settlement agreement, and participated in a two-day, in-person settlement conference totaling approximately 21 hours in March 2024 overseen by Chief Magistrate Judge Sullivan. During that conference, the parties were able to resolve most all outstanding issues, and on June 17, 2024, the parties executed the Settlement Agreement.

III. THE PROPOSED SETTLEMENT AGREEMENT

A. USCIS Implementing Memorandum

Pursuant to the Settlement Agreement, USCIS will issue a memorandum, effective 90 days after the Court's final approval of the agreement, that will explain and implement the Settlement Agreement. Ex. 1, III(A). This superseding memorandum will apply to class members as well as other individuals with prior unaccompanied children determinations who file an asylum

application when the memorandum is in effect, and will remain in effect for at least three years from its effective date. *Id.*

B. Amendment of the Class Definition

As set forth in the Settlement Agreement, the parties agree to seek amendment of the class definition, as follows, to facilitate implementation of the settlement by providing for a cut-off date for the addition of new class members:

> [A]ll individuals nationwide who prior to the effective date of ~~a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum~~ the superseding memorandum discussed in Section III(A): (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.

Ex. 1, II(E). The certified class definition extends class membership to individuals who file an asylum application before the effective date "of a lawfully promulgated policy altering the policy set forth in the 2013 Kim Memorandum." ECF No. 144 at 1. The proposed amended definition specifies that the effective date of USCIS's superseding memorandum will serve as the cutoff date for class membership. The amended definition thus clarifies the date by which an individual must file their asylum application in order to be a class member.

C. Benefits to the Settlement Class

The Settlement Agreement provides many significant benefits to the class members, including but not limited to the following benefits. First, it memorializes that USCIS has fully rescinded the 2019 Redetermination Memo and requires USCIS to issue the superseding memorandum described above. Ex. 1, III(A). Second, USCIS will exercise initial jurisdiction over the asylum applications filed by class members, will adjudicate those applications on the merits, and will hold the applications exempt from one-year filing deadline. Ex A, III(B). Third,

in assessing its jurisdiction over applications filed by a class member, USCIS will not defer to any determinations by an immigration judge, however, USCIS may adopt a previous EOIR determination that a class member was a UAC at the time of filing their asylum application for the purposes of accepting initial jurisdiction. Ex. 1, III(D).

Fourth, USCIS will also retract any adverse jurisdictional determinations rendered on or after June 30, 2019, that merit retraction, in accordance with the timelines and processes described in the Settlement Agreement. Ex. 1, III(C), III(E). Fifth, with respect to class members in removal proceedings, DHS will not take the position that USCIS does not have initial jurisdiction over a class member's asylum application. Ex. 1, III(H). Sixth, DHS will join or non-oppose a motion for a continuance or administrative closure filed by a class member in order to await USCIS exercise of its initial jurisdiction over the asylum application. *Id.*

D. Opt-Outs and Objections

Due to the nature of the relief offered to the class members, the parties believe that an opt-out provision is not necessary for the protection of the rights of the class, and no opt-out provision is included in the Settlement Agreement. The Settlement Agreement does provide a procedure for class members to object to the Settlement and/or be heard at the fairness hearing. Ex. 1, IV(F).

E. Proposed Plan of Notice

The parties' proposed plan to provide notice to class member is designed to reach as many class members as possible. As set forth in the Settlement Agreement, the parties shall effectuate the following:

1. Class Counsel shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on Public Counsel's, National Immigration Project's, and Kids in Need of Defense's websites;

2. USCIS shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on USCIS's website on the "USCIS Class Action, Settlement Notices and Agreements" and the "Asylum" sections;
3. ICE shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on ICE's website on the "Legal Notices" section;
4. Class Counsel shall distribute the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on relevant (as determined by Class Counsel) email or list serv mailing lists for legal services providers; and
5. USCIS's Office of Public Affairs shall email the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000 subscribed users.

Ex. 1, IV(E). The parties' proposed Class Notice for the Court's approval is attached as Exhibit C of the Settlement Agreement (Ex. 1).

F. Attorneys' Fees and Costs

The parties agree that Plaintiffs' request for attorneys' fees and costs does not require resolution before final approval of this Settlement Agreement. The Settlement Agreement provides that "[a]ny application for fees and/or costs shall be filed no later than 30 days after the Court issues its final approval of this Settlement Agreement," and that the Court shall retain jurisdiction to resolve any application for fees and/or costs. Ex. 1, IV(H), VII. Plaintiffs may file a petition to the Court for an award of attorneys' fees and expenses, no later than 30 days after the Court issues its final approval of this Settlement Agreement, as set forth in the Settlement Agreement. Exh. 1, VII.

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class . . . may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). The Court may approve a class action settlement only after a fairness hearing, and only after finding that the settlement agreement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2). The purpose of this rule is to protect class members whose rights may not have been given adequate consideration during the settlement negotiations. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991).

Courts follow a two-step procedure for approval of a class action settlement. *In re Mid–Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983); *see also Manual for Complex Litig.* ("MCL 4th") § 21.632, at 414 (4th ed. 2004); *Grice v. PNC Mortg. Corp. of Am.,* No. 97-3084, 1998 WL 350581, at *2 (D. Md. May 21, 1998) (endorsing MCL 4th's two-step process). In the first stage, the parties submit the proposed settlement to the Court for preliminary approval, which should be granted when a proposed settlement is "within the range of possible approval." *See In Re Mid–Atlantic Toyota Antitrust Litig.*, 564 F. Supp. at 1384. Put another way, preliminary approval is meant to determine whether the settlement is likely to be approved, such that it warrants sending notice to the class and holding a fairness hearing. *Id.*; *see Boger v. Citrix Sys., Inc.*, No. 19-01234, 2023 WL 1415625, at *3 (D. Md. January 31, 2023). In the second stage, following preliminary approval, the class is notified, and a fairness hearing scheduled at which the Court determines whether to approve the settlement. This two-step procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* 5 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 13:1 (5th ed. 2016).

Under Federal Rule of Civil Procedure 23(e)(2), the Court should consider the following factors in evaluating whether a settlement agreement is fair, reasonable, and adequate:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The above factors arose from an amendment of Fed. R. Civ. P. 23(e) in 2018. Before that time, the Fourth Circuit had "developed multifactor standards for assessing whether a class-action settlement is 'fair, reasonable, and adequate' under Rule 23(e)(2)." *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020) (hereinafter, "*Lumber Liquidators*"). Specifically, the Fourth Circuit has specified the following factors for assessing "fairness": (1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation. *Id.* While the Fourth Circuit has "not enumerated factors assessing a settlement's reasonableness," it has specified factors for assessing its adequacy, including: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs

are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[ ] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *Id.*

The Fourth Circuit's "factors for assessing class-action settlements almost completely overlap with the new Rule 23(e)(2) factors." *Id.*; *see also Herrera v. Charlotte Sch. of L., LLC*, 818 F. App'x 165, 176 n.4 (4th Cir. 2020) ("Federal Rule of Civil Procedure 23(e)(2) has been amended and now sets forth factors for the district court to assess in evaluating fairness, reasonableness, and adequacy."). Recognizing this overlap, at least one Fourth Circuit panel has continued to apply the Fourth Circuit factors after the Rule 23(e)(2) amendments, "as they almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same." *Herrera*, 818 F. App'x at 176 n.4.

Applying either the Rule 23(e)(2) factors or the Fourth Circuit's factors, the Settlement Agreement here is fair, reasonable, and adequate, and therefore the agreement should be preliminarily approved.

V. THE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARILY APPROVED

A. The Rule 23(e)(2) Factors All Support Preliminary Approval of the Settlement Agreement

Each of the factors set forth in Rule 23(e)(2) support preliminary approval of the Settlement Agreement.

First, the "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). In granting class certification and appointing class counsel, the Court held that there was "adequate representation," as required under Fed. R. Civ. P. 23(a)(4). ECF No. 143 at 37. Specifically, the Court held that "there does not appear to be any conflict between the named plaintiffs and the other class members" and that "counsel is qualified and experienced." *Id.*

Class representatives made themselves available for consultation during the course of the litigation and years-long settlement process. Class counsel's success in motion practice prior to settlement discussions further reinforces that the class was adequately represented. In contested motions, class counsel successfully obtained a TRO and preliminary injunction (which was later expanded); were granted leave to file an amended complaint; and secured denial of Defendants' motion to dismiss. *See* ECF Nos. 55, 71, 115, 144. Furthermore, during the course of this litigation, class counsel have raised possible violations of the preliminary injunction for individual class members, leading to resolution of the issues for those class members.

Second, the Settlement Agreement is the result of good faith bargaining at arm's length. Fed. R. Civ. P. 23(e)(2)(B). The parties began negotiating settlement in 2021, and have attended at least 12 settlement meetings remotely wherein the parties have discussed the terms of a settlement agreement. Since 2021, the parties exchanged at least ten drafts of a settlement agreement. Further, the parties attended a two-day in-person session in March 2024, mediated by Chief Magistrate Judge Timothy Sullivan, in which the final terms of the Settlement Agreement were agreed upon. There has been no collusion between class counsel and Defendants.

Third, "the relief provided for the class is adequate." Fed. R. Civ. P. 23(e)(2)(C). As a preliminary matter, the terms of the Settlement Agreement provide significant benefits for class members, supporting the reasonableness and adequacy of the agreement. USCIS has agreed that it will exercise initial jurisdiction over class members' asylum applications and will not defer to an immigration judge's determination as to whether the class member qualifies for initial USCIS jurisdiction as an unaccompanied child, however, USCIS may adopt a previous EOIR determination that a class member was a UAC at the time of filing their asylum application for the purposes of accepting initial jurisdiction. Ex. 1, III(C)(3), III(D). Thus, the Settlement Agreement

provides relief to class members whose rights would have been impaired if the 2019 Redetermination Policy were allowed to remain in effect. For example, class members who received an adverse jurisdictional determination, pursuant to the previous policy will have their prior determination retracted. Ex. 1, III(E). And, with respect to class members in removal proceedings, DHS will not take the position that USCIS does not have initial jurisdiction over a class member's asylum application and will join or non-oppose a motion for a continuance or administrative closure filed by a class member in order to await USCIS exercise of its initial jurisdiction over the asylum application. Ex. 1, III(H). In short, under the Settlement Agreement, class members will now have the opportunity for their asylum applications to be decided on the merits by USCIS.

Under Rule 23(e)(2)(B), the adequacy of a settlement agreement must also be evaluated in view of the "costs, risk, and delay of trial and appeal."[2] While Plaintiffs believe they have a strong likelihood of prevailing on the merits, either at summary judgment or at trial, Plaintiffs acknowledge that uncertainty remains as to a final outcome if the case were litigated to a final decision. For example, Plaintiffs acknowledge that the Court did not agree, at the TRO stage, with Plaintiffs' argument that USCIS acted in excess of statutory authority because the redetermination policy, as set forth in the May 31, 2019 memorandum, is inconsistent with the TVPRA. ECF No. 54 at 13. Furthermore, Defendants have appealed the Courts' grant of a preliminary injunction and Plaintiffs' motion for class certification, and Plaintiffs acknowledge that a merits adjudication of the appeal pending in the Court of Appeals for the Fourth Circuit entails prolonged timelines

[2] Fed. R. Civ. P. 23(e)(2)(B) also refers to "the terms of any proposed award of attorney's fees, including timing of payment." This factor is not relevant here. With respect to attorneys' fees, the parties have agreed, as set forth in the Settlement Agreement, that class counsel may file a petition for fees within a month after final approval of the agreement.

and uncertain outcomes. This uncertainty supports preliminary approval of the Settlement Agreement as an adequate resolution of Plaintiffs' and the class members' claims. Continuing to litigate would also likely result in significant delays, potentially for several years, in class members —whose asylum applications USCIS declined jurisdiction or placed on hold—being able to have an adjudication of their asylum case on the merits. Settlement at this time will further benefit those class members by allowing their asylum applications to be placed in USCIS's queue for adjudication so that they can be heard on the merits without further delay.

Fed. R. Civ. P. 23(e)(2)(B) also requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." This too supports the adequacy of the Settlement Agreement. Given the nature of the claims at issue in this case, there is no monetary award that will be distributed to class members, nor will class members be required to submit claims to be processed. Rather Defendants' compliance with the terms of the Settlement Agreement will provide relief. For example, USCIS has agreed to exercise initial jurisdiction over class members' asylum applications in accordance with the terms of the Settlement Agreement; to adjudicate the application on the merits; and to hold the applications exempt from a one-year filing deadline. Ex. 1, III(B).

Finally, "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The Settlement Agreement treats all class members equitably, as all are entitled to the same benefits. Accordingly, this factor also supports preliminary approval of the Settlement Agreement.

B. The Fourth Circuit Factors Also Support Preliminary Approval of the Settlement Agreement

The Fourth Circuit factors also support a preliminary finding that the Settlement Agreement is fair and adequate. In some cases, the Fourth Circuit has "continue[d] to apply its own standards as they 'almost completely overlap with the new Rule 23(e)(2) factors,' rendering the analysis the same" as under Rule 23(e)(2). *Herrera*, 818 F. App'x at 176.

1. The Settlement Agreement is Fair

The Fourth Circuit has specified the following factors for assessing "fairness": (1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation." *Lumber Liquidators*, 952 F.3d at 484. Each factor supports a finding that this Settlement Agreement is fair.

First, the posture of the case at the time settlement was proposed reinforces that the Settlement Agreement is fair. *Lumber Liquidators*, 952 F.3d at 484. This case was not in its infancy at the time that settlement discussion began; rather, the parties had already litigated substantial issues and were prepared to go forward into summary judgment and trial. On June 3, 2020, the Court denied Defendants' motion to dismiss Plaintiffs' claims, or in the alternative, for summary judgment. ECF No. 115. The Court granted a preliminary injunction, which it later expanded once, and also certified the class. ECF Nos. 71, 144. The case has been stayed since December 2020 (ECF No. 144), and since early 2021 the parties have been engaged in settlement negotiations, which culminated in the two-day in-person session mediated by Chief Magistrate Judge Sullivan.

Second, the extent of discovery conducted also supports preliminary approval of the Settlement Agreement. *Lumber Liquidators*, 952 F.3d at 484. This class action case involved

allegations of Defendants' failure to comply with the APA, and therefore Defendants were obligated to produce the relevant administrative record. On July 24, 2020, USCIS filed a certified administrative record with the Court, ECF No. 128, which it amended on October 2, 2020, ECF No. 138. Class counsel conducted a thorough review of the administrative record produced in the litigation which resulted in well-informed settlement negotiations.

Third, the circumstances surrounding settlement discussions and the experience of class counsel also supports preliminary approval. *Lumber Liquidators*, 952 F.3d at 484. The Settlement Agreement is the result of extensive, arm's-length negotiations between counsel for the Parties who are familiar with the legal and factual issues of this Action. Class counsel have deep experience in the specialized needs of unaccompanied children. The named Plaintiffs relied on the judgment of counsel, who have extensive experience litigating, settling, and trying immigration cases and related class actions. Indeed, in such circumstances, it may be presumed that a settlement is fair. *See Good v. W. Va.-Am. Water Co.*, No. 14-1374, 2017 WL 2884535, at *16 (S.D.W. Va. July 6, 2017) (finding "no evidence of chicanery" in the circumstances surrounding the settlement and noting counsel's "abundance of experience" and the advanced stage of the litigation).

Furthermore, this is not a class action case where there is any danger of counsel compromising a suit for an inadequate amount for the sake of ensuring a fee. Class counsel are representing the named Plaintiffs and the class on a *pro bono* basis. Moreover, the named Plaintiffs and the class members are not seeking any monetary damages, nor does the Settlement Agreement provide for any award of damages.

2. The Settlement Agreement is Adequate

The Fourth Circuit has identified the following factors for assessing the "adequacy" of a class action settlement: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the

case goes to trial; (3) the anticipated duration and expense of additional litigation; and (4) the degree of opposition to the settlement.[3] *Lumber Liquidators*, 952 F.3d at 484. Each factor supports a preliminary finding that the Settlement Agreement here is adequate.

First, the relative strength of Plaintiffs' case on the merits is reflected in the Court's previous grant of a TRO and preliminary injunction with respect to certain claims. In granting a TRO, the Court found Plaintiffs likely to succeed on the merits of their claims that Defendants had both failed to consider children's reliance interests and violated APA procedure. ECF No. 54 at 10-13. Further, in expanding the preliminary injunction, the Court found Plaintiffs would likely succeed on the merits of the arguments against U.S. Immigration and Customs Enforcement (ICE) advocacy for USCIS jurisdiction and USCIS deference to immigration judges' unaccompanied child redeterminations for class members in removal proceedings. ECF No. 143 at 44-45, 49-50.

The second adequacy "factor" is "the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial." *Lumber Liquidators*, 952 F.3d at 484. As explained above, Plaintiffs believe they have a strong likelihood of prevailing on the merits, either at summary judgment or at trial, but acknowledge that uncertainty remains as to a final outcome if the case were litigated to a final decision. *Supra* Section V.A. Furthermore, appellate action entails prolonged timelines. This uncertainty supports the adequacy of the Settlement Agreement as a reasonable resolution of Plaintiffs' and the class members' claims.

Third, "the anticipated duration and expense of additional litigation" further supports the adequacy of the agreement. As explained above, continuing to litigate this case would likely result

[3] The Fourth Circuit's *Lumber Liquidators* decision also refers to "the solvency of the defendant[] and the likelihood of recovery on a litigated judgment" as factors in evaluating the adequacy of a settlement agreement. *Lumber Liquidators*, 952 F.3d at 484. These factors are not relevant here, because no monetary relief will be distributed to class members.

in significant delays, potentially for several years, in class members whose cases USCIS has rejected or placed on hold being able to have USCIS recognize jurisdiction over their asylum application and adjudicate it on the merits. *Supra* Section V.A. As a result of the settlement, class members will be allowed to have their asylum applications heard on the merits without further delay.

Finally, as to the last factor, there is currently no opposition to the Settlement Agreement. As explained above, class counsel and Defendants have negotiated a compromise agreement through extensive arm's-length negotiations, ultimately supervised by Chief Magistrate Judge Sullivan. If any class member objects to the agreement after notice is provided, the parties will reassess this factor, but at this stage, preliminary approval is warranted.

VI. THE CLASS DEFINITION SHOULD BE AMENDED

The parties request amending the class definition to clarify the date when an asylum applicant must file their application in order to fall within the class. As explained above (*supra* Section III.A), pursuant to the Settlement Agreement, USCIS will issue a memorandum, no later than 90 days after the Court's final approval of the agreement, that will explain and implement the Settlement Agreement. Ex. 1, III(A). This superseding memorandum will apply to class members, and will remain in effect for at least three years from the superseding memorandum's effective date. *Id.* The certified class definition extends class membership to individuals who file an asylum application before the effective date "of a lawfully promulgated policy altering the policy set forth in the 2013 Kim Memorandum." The proposed amended definition specifies that the effective date of USCIS' superseding memorandum will serve as the cutoff date for class membership. The amended definition thus clarifies the date by which an individual must file their asylum application with USCIS in order to be a class member.

"Even after a certification order is entered, the [Court] remains free to modify [the class definition] in the light of subsequent developments in the litigation." *Bezek v. First Nat'l Bank of Pa.*, No. 17-2902, 2023 WL 8622604, at *3 (D. Md. Dec. 13, 2023). The requested change to the class definition does not alter the reasoning underlying the Court's prior Order granting class certification, and therefore, the Court may adopt the amended definition and preliminarily approve the Settlement Agreement. *See, e.g.*, *Foster v. Adams & Assoc.*, No. 18-02723, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021).

VII. THE PLAN FOR PROVIDING NOTICE TO CLASS MEMBERS SATISFIES RULE 23

Federal Rule of Civil Procedure 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. The form of notice is "adequate if it may be understood by the average class member." *In re Titanium Dioxide Antitrust Litig.*, No. 10-0318, 2013 WL 5182093, at *5 (D. Md. Sept. 12, 2013). Further, under Federal Rule Civil Procedure 23(c)(2)(B), this Court must "direct to the class members the best notice practicable under the circumstances." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 617 (1997). The proposed Class Notice, and plan for distributing the notice, here fulfills these requirements.

As set forth in the proposed Class Notice, class members will receive a summary (in both English and Spanish) of the various provisions of the Settlement Agreement, as well as links to websites containing the full terms of the agreement. Ex. C to Ex. 1. The Class Notice will also be sufficiently disseminated, as the Class Notice is designed to reach a high percentage of settlement class members. The Class Notice will be posted on the USCIS and ICE websites, as well as Plaintiffs' non-profit counsels' websites. Ex. 1, IV(E). Class counsel will also distribute the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on e-mail and/or

list-serv mailing lists for legal services providers. *Id.* Furthermore, USCIS's Office of Public Affairs will email the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000 subscribed users. The Class Notice, and plan for distribution, therefore satisfies Fed. R. Civ. P. 23(b)(3). *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 5182093, at *5.

VIII. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court preliminarily approve the Settlement Agreement; amend the Class Definition; approve the Class Notice; direct that notice be provided to the Class as proposed in section IV(E) of the Settlement Agreement; and schedule a Fairness Hearing.

Dated: July 29, 2024

Respectfully submitted,

/s/ Brian T. Burgess

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EXHIBIT 1

SETTLEMENT AGREEMENT

J.O.P. v. D.H.S. et al.
District of Maryland
Civil Action No. 8:19-CV-01944-SAG

Plaintiffs J.O.P., M.E.R.E., K.A.R.C., E.D.G., and L.M.Z. (the "Named Plaintiffs"), and the Class (defined in Section II of this Settlement Agreement) (collectively, "Plaintiffs"), and Defendants U.S. Department of Homeland Security ("DHS"); Alejandro Mayorkas, in his official capacity as Secretary of Homeland Security; U.S. Citizenship and Immigration Services ("USCIS"); Ur Mendoza Jaddou, in her official capacity as Director of USCIS; U.S. Immigration and Customs Enforcement ("ICE"); and Patrick J. Lechleitner, in his official capacity as ICE Deputy Director and Senior Official Performing the Duties of the Director (collectively, "Defendants") (together with the Plaintiffs, the "Parties"), by and through their attorneys, hereby enter into this Settlement Agreement, as of the date it is executed by all Parties hereto and effective upon final approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. RECITALS

A. On July 1, 2019, Plaintiffs J.O.P., M.A.L.C., M.E.R.E., and K.A.R.C. commenced this litigation for declaratory and injunctive relief (the "Action") based on allegations that USCIS had adopted policies, as reflected in the May 31, 2019 memorandum titled "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children" ("2019 Redetermination Memo"), that changed how USCIS would implement protections provided to Unaccompanied Alien Children ("UAC") under the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA"), which policies were contrary to the TVPRA, and violative of the Administrative Procedure Act ("APA") and the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Under the 2019 Redetermination Memo, a child in immigration court removal proceedings who had previously been determined to be a UAC and who applied for asylum after turning 18 or reunifying with a parent or legal guardian would have their asylum application rejected by USCIS for lack of jurisdiction. The 2019 Redetermination Memo also directed that a child previously determined to be a UAC would be subject to the One-Year Deadline for filing asylum applications—a deadline from which UACs are statutorily exempt—if they applied for asylum after turning 18 or reunifying with a parent or legal guardian.

B. The Court entered a temporary restraining order on August 2, 2019, and converted it to a preliminary injunction on October 15, 2019, enjoining and restraining Defendants, during the pendency of the litigation, from (i) applying the policy set forth in the 2019 Redetermination Memo, to bar individuals previously determined to be UACs from seeking asylum before USCIS; and (ii) rejecting jurisdiction over the application of any UAC (as defined in the Homeland Security Act, 6 U.S.C. § 279(g)(2)) under the TVPRA whose application would have been accepted under the USCIS policy predating the 2019 Redetermination Memo. The Court also ordered Defendant USCIS to retract any adverse decision already rendered in an individual case applying the 2019

Redetermination Memo and reinstate consideration of such case applying the 2013 UAC Memorandum (also known as the 2013 Kim Memo).

C. On December 20, 2019, Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. filed an amended complaint that included their prior allegations and also alleged, *inter alia*, that USCIS had adopted an unlawful policy, as reflected in the 2019 Redetermination Memo, to defer to a determination by an Executive Office for Immigration Review ("EOIR") immigration judge that USCIS does not have jurisdiction over an asylum application because it was not one filed by a UAC.

D. On December 21, 2020, the Court entered an amended preliminary injunction, such that Defendants, during the pendency of this litigation, are "(1) enjoined and restrained from relying on the policies set forth in the 2019 [Redetermination Memo] as a basis to decline jurisdiction over asylum applications of individuals previously determined to be unaccompanied alien children ("UACs"), to subject an asylum applicant to the one-year time limit for filing described at 8 U.S.C. § 1158(a)(2)(B), or for any other purpose; (2) enjoined and restrained from rejecting jurisdiction over any asylum application filed by Plaintiffs and members of the class whose applications would have been accepted under the 2013 Kim Memo; (3) enjoined and restrained from deferring to EOIR determinations in assessing jurisdiction over asylum applications filed by Plaintiffs and members of the proposed class; and (4) enjoined and restrained during the removal proceedings of any Plaintiff or member of the class (including EOIR proceedings before immigration judges and members of the Board of Immigration Appeals) from seeking denials of continuances or other postponements in order to await adjudication of an asylum application that has been filed with USCIS, from seeking EOIR exercise of jurisdiction over any asylum claim where USCIS has initial jurisdiction under the terms of the 2013 Kim Memo, or from otherwise taking a position in such individual's removal proceedings that, inconsistent with the 2013 Kim Memo, USCIS does not have initial jurisdiction over the individual's asylum application." The Court also ordered Defendant USCIS to "retract any adverse decision rendered on or after June 30, 2019 that is based in whole or in part on any of the actions enjoined and restrained by (1), (2), or (3) above."

E. On December 21, 2020, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court certified the following Class:

> All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who filed an asylum application that was pending with the United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.

F. On January 11, 2021, Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., E.D.G., and L.M.Z. filed a second amended complaint that included their prior allegations and also alleged, *inter alia*, that USCIS had adopted an unlawful policy or practice of treating recognitions or notations as to evidence that a child has turned 18 or been reunited with a parent or legal guardian as "affirmative acts" under the 2013 Kim Memo.

G. On February 19, 2021, Defendants filed an appeal from the Court's December 21, 2020 Order with the U.S. Court of Appeals for the Fourth Circuit.

H. On March 4, 2021, Defendants agreed as follows: that USCIS will not make jurisdictional determinations under INA § 208(b)(3)(C) that rely solely on a UAC redetermination noted in ENFORCE Alien Removal Module ("EARM") or other ICE or DHS systems as terminating a prior UAC Determination, unless it documents that ICE placed the individual in ICE custody as an adult detainee; and that while this agreement remains in effect, USCIS will place on hold cases involving any other type of act that might qualify under the 2013 Kim Memo as an "affirmative act" before filing.

I. The Parties, through counsel, have conducted discussions and arm's length negotiations regarding a compromise and settlement of the Action with a view to settling all matters in dispute.

J. Considering the benefits that the Class (including Named Plaintiffs) will receive from settlement of the Action and the risks of litigation, counsel for the Class ("Class Counsel") have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, equitable, and in the best interests of the Class.

NOW, THEREFORE, in recognition that the Parties and the interests of justice are best served by concluding this Action, subject to the Court's approval and entry of an order consistent with this Agreement, the undersigned Parties, through counsel, hereby STIPULATE and AGREE as follows:

II. DEFINITIONS

As used throughout this Settlement Agreement, the following definitions shall apply:

A. "Action" means the civil action captioned *J.O.P. et al. v. D.H.S. et al.*, Civil Action No. 8:19-CV-01944-SAG, United States District Court for the District of Maryland.

B. "Adjudicate on the merits" means to render a decision on the substance of an asylum claim by either granting an approval or issuing a determination of non-eligibility.

C. "Adverse Jurisdictional Determination" means a determination by USCIS that it lacks jurisdiction over an asylum claim.

D. **"Appeal"** means the Defendants' appeal from the December 21, 2020 decision in the Action, filed in the United States Court of Appeals for the Fourth Circuit, C.A. No. 21-1187.

E. **"Class"** means all individuals nationwide who prior to the effective date of the superseding memorandum discussed in Section III(A): (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits. As the Class is defined more specifically under this Settlement Agreement than in the Court's class certification order, the Parties agree to seek a modification of the Class definition from the Court.

F. **"Class Counsel"** means Goodwin Procter LLP, Public Counsel, National Immigration Project of the National Lawyers Guild ("NIPNLG"), Kids in Need of Defense ("KIND"), and Bet Tzedek Legal Services. Should any of the foregoing entities change their name or merge with other entities, those new entities shall also qualify as Class Counsel.

G. **"Class Member"** means a member of the Class.

H. **"Court"** means the U.S. District Court for the District of Maryland.

I. **"Defendants"** means DHS; Alejandro Mayorkas, in his official capacity as Secretary of DHS; USCIS; Ur Mendoza Jaddou, in her official capacity as Director of USCIS; ICE; and Patrick J. Lechleitner, in his official capacity as Deputy Director and Senior Official Performing the Duties of the Director of ICE.

J. **"Effective Date"** means the date this Settlement Agreement receives final approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

K. **"EOIR"** means the Executive Office for Immigration Review, the U.S. Department of Justice body tasked with hearing immigration court proceedings and adjudicating appeals, which includes immigration judges and appellate immigration judges assigned to the Board of Immigration Appeals.

L. **"Final Determination"** means either that: (a) USCIS has made an adjudication on the merits, as defined in Paragraph II.B; or (b) USCIS has provided notice to the applicant that the asylum application has been dismissed, terminated, or returned to immigration court due to an Adverse Jurisdictional Determination as defined in Paragraph II.C, except that no Adverse Jurisdictional Determination shall give rise to a Final Determination: (1) while the Class Member is challenging the Adverse Jurisdictional Determination via the procedure described in Paragraph V.D; (2) if the Adverse Jurisdictional Determination was issued under Paragraph III.C, while the Class

Member is still within the time period to file a rebuttal as described in that paragraph and while the Class Member's rebuttal is pending before USCIS; or (3) if the Adverse Jurisdictional Determination must be re-examined under Paragraph III.E and that re-examination is not yet complete.

M. "Initial Jurisdiction" means USCIS jurisdiction over an individual's asylum claim pursuant to 8 U.S.C. § 1158(b)(3)(C) despite the individual's being in removal proceedings.

N. "Named Plaintiffs" means J.O.P., M.E.R.E., K.A.R.C., E.D.G., and L.M.Z. The full names of the Named Plaintiffs have been provided to the Court under seal.

O. "One-Year Deadline" means the general requirement for asylum seekers to file any asylum application within one year of their last arrival in the United States, set forth at 8 U.S.C. § 1158(a)(2)(B).

P. "Parties" means Plaintiffs and Defendants in the Action.

Q. "Settlement Agreement" or "Agreement" means this Class Action Settlement Agreement between the Parties in the Action, including all exhibits.

R. "Settled Claims" means all claims for relief that were brought in the Action on behalf of Named Plaintiffs and Class Members alleged in Plaintiffs' Complaints.

S. "Termination Date" means the date that is 548 days after the Effective Date.

S.1 "Termination Date – USCIS Memo" means the date that is three years after the superseding memorandum's effective date as set forth in paragraph III.A of this Settlement Agreement.

T. "TVPRA" means the William Wilberforce Trafficking Victims Protection Reauthorization Act, Public Law 110-457, 122 Stat. 5044 (December 23, 2008).

U. "Unaccompanied Alien Child" or "UAC" means "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody," as set forth in 6 U.S.C. § 279(g)(2).

V. "Prior UAC Determination" means a finding by ICE or U.S. Customs and Border Protection that an individual is a UAC as defined in 6 U.S.C. § 279(g)(2).

W. "2013 Updated Procedures Memo" means the May 28, 2013 Memorandum, titled "Updated Procedures for Determination of Initial Jurisdiction over Asylum

Applications Filed by Unaccompanied Alien Children" from Ted Kim (Acting Chief, Asylum Division, USCIS).

X. "**2019 Redetermination Memo"** means the May 31, 2019 Memorandum, titled "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children" from John Lafferty (Chief, Asylum Division, USCIS).

III. AGREED UPON TERMS

A. USCIS has fully rescinded the 2019 Redetermination Memo. USCIS labelled the website with the 2019 Redetermination Memo with a banner stating the memo is no longer current. USCIS will also issue a superseding memorandum explaining and implementing this Settlement Agreement no later than 90 days after the Court's final approval of this Settlement Agreement. The superseding memorandum's effective date will be 90 days after the Court's final approval of this Settlement Agreement. The superseding memorandum will apply to Class Members as well as other individuals with Prior UAC Determinations who file an asylum application when the memorandum is in effect. The superseding memorandum will remain in effect for at least three years from the superseding memorandum's effective date.

B. USCIS will exercise Initial Jurisdiction over Class Members' asylum applications in accordance with the terms of this Settlement Agreement and adjudicate them on the merits, and USCIS will hold such applications exempt from the One-Year Deadline.

C. **1.** Notwithstanding Paragraph III.B of this Settlement Agreement, USCIS may determine it lacks Initial Jurisdiction over the asylum application of a Class Member if the Class Member was placed in adult immigration detention after a Prior UAC Determination but before filing their asylum application. "Placed in adult immigration detention" does not include custody for the sole purposes of processing the Class Member prior to release on their own recognizance or release through another alternative to detention, such as an order of supervision, parole, enrollment in an alternative to detention program, or ICE bond. The Class Member must submit evidence of a Prior UAC Determination that USCIS may adopt. If the individual had contact with ICE as an adult, they may also submit evidence of any custodial determinations made by ICE after they attained 18 years of age, including but not limited to the Class Member's declaration made in accordance with 28 U.S.C. § 1746.

2. When USCIS declines Initial Jurisdiction based on this provision, USCIS must provide the Class Member and counsel, if any, with: (a) the jurisdictional rejection; (b) a detailed description of the information leading USCIS to believe that the Class Member was placed in adult immigration detention; and (c) an opportunity to rebut the information within 30 days (or 33 days if the rejection and accompanying detailed description are served by mail). USCIS shall simultaneously provide the Class Member and counsel, if any, with Class Counsel's contact information, using the language found at Exhibit A. USCIS shall retract the jurisdictional rejection within 30 days of having

received the Class Member's rebuttal if the Class Member has successfully rebutted the information USCIS relied upon to reject Initial Jurisdiction.

3. For Class Members who fall within this paragraph due to USCIS's rejection of Initial Jurisdiction and whose applications could otherwise be deemed untimely, DHS generally will agree to stipulate in their removal proceedings that the Class Member qualifies for an extraordinary circumstances exception under 8 U.S.C. § 1158(a)(2)(D), 8 C.F.R. § 208.4(a)(5), and has filed within a reasonable period given the circumstances under 8 C.F.R. § 208.4(a)(5) for purposes of the One-Year Deadline such that the One-Year Deadline does not bar the asylum application.

D. In assessing its jurisdiction over asylum applications filed by a Class Member, USCIS will not defer to any determinations by EOIR, including but not limited to determinations made pursuant to *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018). Notwithstanding the previous sentence, USCIS may adopt a previous EOIR determination that a Class Member was a UAC at the time of filing their asylum application for purposes of USCIS's accepting Initial Jurisdiction over a Class Member's asylum application.

E. **1.** Defendants shall retract any Adverse Jurisdictional Determinations rendered on or after June 30, 2019 that merit retraction under the process described in Paragraph III.C.2 no later than 240 days after USCIS's issuance of the superseding memorandum described in Paragraph III.A.

2. Defendants shall retract all other Adverse Jurisdictional Determinations rendered on or after June 30, 2019 that are inconsistent with Paragraphs III.B and/or III.D no later than 180 days after USCIS's issuance of the superseding memorandum described in Paragraph III.A.

3. No later than 60 days after the Effective Date, Defendants shall mail to Class Members whose cases will be reviewed under this paragraph a notice of re-examination of jurisdictional determination indicating that USCIS will make a jurisdictional determination in the case pursuant to this Settlement Agreement. Defendants shall include in the notice Class Counsel's contact information, using the language found at Exhibit A.

F. No later than 60 days after USCIS's issuance of the superseding memorandum described in Paragraph III.A of this Settlement Agreement, Defendants shall release the holds placed beginning in March 2021 on certain Class Members' asylum applications involving acts that in USCIS's view might have qualified under the 2013 Kim Memo as an affirmative act before filing and shall mail to such Class Members a notice that their asylum application has been released from the hold. Defendants shall include in the notice Class Counsel's contact information, using the language found at Exhibit A.

G. Defendants will adopt procedures permitting Class Members to request that USCIS exercise its discretion to expedite adjudication of asylum applications pending with USCIS on the basis of circumstances that include but need not be limited to:

1. The Class Member's immigration detention;

2. The Class Member received a Notice of Lack of Jurisdiction that was retracted under Paragraph III.C or Paragraph III.E of this Settlement Agreement; or

3. The Class Member has an order of removal.

All Class Members, including Class Members whose asylum applications were released from hold pursuant to Paragraph III.F of this Settlement Agreement, may also avail themselves of the general expedite procedures available at their local asylum offices.

H. With respect to DHS's treatment of Class Members in removal proceedings, DHS will refrain from taking the position that USCIS does not have Initial Jurisdiction over a Class Member's asylum application. DHS will join or non-oppose Class Members' motion(s) for a continuance, administrative closure unless unavailable under controlling law in a particular jurisdiction, and, where available, assignment of cases to the EOIR status docket, that have been filed or made orally on the record in immigration proceedings in order to await USCIS exercise of Initial Jurisdiction over their asylum application. Nothing in this provision prevents DHS from either filing a motion to dismiss or terminate removal proceedings of a Class Member to await USCIS's adjudication of the asylum application or as a matter of prosecutorial discretion, or from joining or non-opposing a motion to dismiss or terminate proceedings filed or made orally on the record by a Class Member. DHS will generally join or non-oppose Class Members' motion(s) to dismiss or terminate filed or otherwise made in order to await USCIS exercise of Initial Jurisdiction over their asylum application. Defendants retain discretion to oppose Class Members' motion(s) if it deems such opposition warranted based on the individual facts of the cases, as long as DHS's opposition is not based, in whole or in part, on a position that USCIS does not have Initial Jurisdiction over the Class Member's asylum application. Pursuant to this paragraph, Defendants agree that in cases where DHS chooses not to file any response with EOIR indicating its position on the Class Members' properly served motions for continuance, dismissal or termination, administrative closure unless unavailable under controlling law in a particular jurisdiction, adjournments or, where available, assignment of cases to the EOIR status docket, this provision of the Settlement Agreement serves as evidence of DHS's non-opposition.

I. With respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement. In order to comply with this provision, ICE Enforcement and Removal

Operations (ERO), the agency responsible for executing removal orders, will make an entry indicating there is a stay in its system of records for all identified Class Members, including Class Members identified by USCIS. This alert will not be removed from any individual case until such time as USCIS indicates it is appropriate to remove it.

J. Following a grant of asylum by USCIS to a Class Member with a removal order:

1. Defendants agree that, where DHS has chosen not to file a response to a properly filed and served Class Member's motion to reopen, this provision of the Settlement Agreement serves as evidence of DHS's non-opposition to the motion filed on behalf of a Class Member described in this section. To avoid the time and number bars for motions to reopen, Defendants agree that Class Members may style their motions to reopen as a "joint motion to reopen" and include language that "Pursuant to the Settlement Agreement in *J.O.P. v. U.S. Department of Homeland Security,* No. 19-01944 (D. Md.), DHS is joining in the motion unless DHS files a response within 30 days opposing the motion." DHS will generally join or not oppose a motion to reopen. The use of this provision of the Settlement Agreement as evidence of joinder is solely limited to DHS's joinder for the purposes of acknowledging class membership and the terms of the Settlement Agreement, and as a factor for the applicability of any time or number bars that may otherwise apply to the motion. This provision may not be used for any other purpose. The Defendants agree that any opposition to the motion to reopen will not be based on a position that USCIS did not have Initial Jurisdiction over the Class Member's asylum application. The joinder framework found in this paragraph only applies to motions to reopen and shall have no effect on any combination or concurrently filed motions, e.g., motions to reopen and dismiss.

2. In conjunction with or following reopening of such proceedings, DHS will generally join or non-oppose termination or dismissal of removal proceedings, but retains discretion to oppose termination or dismissal if it deems such opposition warranted based on the individual facts of a case, as long as DHS's opposition is not based, in whole or in part, on a position that USCIS did not have Initial Jurisdiction over the Class Member's asylum application.

3. Nothing in this provision prevents DHS from filing an unopposed or joint motion to reopen the removal proceedings of a Class Member described in this section, or from filing an unopposed or joint motion to dismiss or terminate proceedings of a Class Member described in this section.

K. For any provision of this Settlement Agreement wherein DHS will join or non-oppose motions filed or made by Class Members, DHS will join or non-oppose such motions when they are submitted with sufficient evidence of Class membership. Any one of the following documents provides sufficient evidence of Class membership for purposes

of DHS's obligations to join or non-oppose motions as specified elsewhere in the Settlement Agreement. In its discretion, DHS may treat evidence other than that specified below as sufficient evidence of Class membership.

1. A copy of a receipt for an asylum application filed pursuant to INA § 208(b)(3)(C);

2. A copy of an asylum application cover letter sent to USCIS, along with a screenprint of the USCIS Case Status Online tool reflecting that USCIS has accepted the application for processing; or

3. A declaration made in accordance with 28 U.S.C. § 1746 stating that the individual was determined to be a UAC, filed an asylum application with USCIS that USCIS has not adjudicated on the merits, and on the date they filed their asylum application with USCIS they were 18 years of age or older, or had a parent or legal guardian in the United States available to provide care and physical custody.

IV. CONDITIONS AND APPROVAL OF THE SETTLEMENT

A. Effective Date of Agreement. After this Agreement has been signed by all Parties, it will become effective upon final approval by the Court.

B. Preliminary Approval. As soon as practicable after the execution of this Agreement, the Parties shall jointly move for a Preliminary Approval Order, substantially in the form of Exhibit B, preliminarily approving this Settlement Agreement and finding this settlement to be fair, just, reasonable, and adequate, approving the Class Notice to the Class Members, substantially in the form of Exhibit C, and setting a hearing to consider final approval of the Settlement and any objections thereto.

C. Effect of the Court's Rejection of the Agreement. If the Court rejects this Agreement, in whole or in part, or other otherwise finds that the Agreement is not fair, just, reasonable, and adequate, the Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the Agreement accordingly.

D. Fairness Hearing. At the fairness hearing, as required for final approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties will jointly request that the Court approve the Settlement Agreement as fair, final, reasonable, adequate, and binding on the Class, all Class Members, and all Plaintiffs; and issue a Final Approval Order, substantially in the form of Exhibit D.

E. Notice for Fairness Hearing. Not later than 14 days after entry of the Preliminary Approval Order (unless this time period is modified by written agreement of the Parties' counsel or by order of the Court), the Parties shall effectuate the following:

1. Class Counsel shall post the Class Notice (in English and Spanish), including a copy of this Settlement Agreement, on Public Counsel's, NIPNLG's, and KIND's websites;

2. USCIS shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on USCIS's website on the "USCIS Class Action, Settlement Notices and Agreements" and the "Asylum" sections;

3. ICE shall post the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on ICE's website on the "Legal Notices" section;

4. Class Counsel shall distribute the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, on relevant (as determined by Class Counsel) email or list serv mailing lists for legal services providers; and

5. USCIS's Office of Public Affairs shall email the Class Notice (in English and Spanish), including a copy of the Settlement Agreement, to its approximately 47,000 subscribed users.

F. Objections. Any Class Member who wishes to object to the Settlement and/or be heard at the fairness hearing must submit a written notice of objection and/or request to be heard at the fairness hearing, postmarked within 60 days of entry of the Preliminary Approval Order (or such other deadline as the Court may order), by mailing the notice of objection and/or request to be heard to the District Court for the District of Maryland, or by filing the notice of objection and/or request to be heard with the Court. Each notice of objection or request to be heard must be served on the Parties as set forth in the Class Notice and must include: (i) the case name and number, *JOP v. DHS*, No. 8:19-CV-01944-SAG, (ii) the Class Member's name, (iii) the Class Member's current address and telephone number, or current address and telephone number of the Class Member's legal representative, (iv) the grounds upon which the claimed Class membership is based; (v) an explanation of why the Class Member objects to the Settlement, including the grounds therefore, any supporting documentation, and (vi) whether the Class Member requests the opportunity to be heard at the fairness hearing. Any such objection or notice of request to be heard may be filed under seal to avoid disclosure of any personal identifying information on the public record. Failure to comply with all requirements of this section shall constitute grounds for striking an objection or denying a request to be heard, if any. The Parties will have 14 days following the objection period in which to submit answers to any objections that are filed.

G. Opt-Outs. Due to the nature of the relief offered to the Class Members, there are no grounds for Class Members to opt-out.

H. Final Approval. The Court's final approval of the settlement set forth in this Agreement shall consist of its Final Approval Order granting each of the Parties' requests made in connection with the fairness hearing, resolving all claims before the Court, giving effect to the releases as set forth in Section VI, dissolving the preliminary injunction, and dismissing the Action with prejudice, with the exception that following final approval of this Agreement, the Court shall retain jurisdiction over only the following matters as provided in this section and only until the date the Agreement terminates as described in Section IV.K:

1. Claims by any Party in accordance with the provisions laid out in Section V of this Agreement that any other Party has committed a violation of this Agreement;

2. The express repudiation of any of the terms of this Agreement by any Party; and

3. Plaintiffs' claims for attorney fees and/or litigation costs.

I. Withdrawal of Appeal. Upon final approval, Defendants shall withdraw their Appeal.

J. Notice of Final Approval. Not later than 14 days after entry of final approval of the Agreement (unless this time period is modified by written agreement of the Parties' counsel or by order of the Court), the Parties shall provide an Updated Class Notice (in English and Spanish), substantially in the form of Exhibit E, to the same websites and distribution lists as set forth in Section IV.E.

K. Termination. This Settlement Agreement shall terminate 548 days after the Effective Date, except that the Court shall have jurisdiction to enforce Paragraph III.A of this Agreement until three years after the superseding memorandum's effective date.

V. RETENTION OF JURISDICTION, NON-COMPLIANCE, AND ENFORCEMENT

A. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction to supervise the implementation of this Settlement Agreement and to enforce its provisions and terms until the Termination Date, except that the Court shall retain jurisdiction over Paragraph III.A (USCIS superseding memorandum) until the Termination Date – USCIS Memorandum, and the terms of this Agreement shall be incorporated into the order of the Court approving the Agreement.

B. Compliance Reports. Defendants shall report to the Court and Class Counsel on their compliance with Paragraphs III.E and III.F of this Agreement within 30 days of the end of each time period for compliance that is specified within those paragraphs. No later than 180 days after the Effective Date, and each 180 days thereafter, Defendants will report on compliance with Paragraphs III.A through G inclusive of this Settlement Agreement. Such Compliance Reports will be substantially in the form of the relevant sections of Exhibit F to this Settlement Agreement.

C. Response to Compliance Reports. Following the provision of each Compliance Report described in Paragraph V.B, Plaintiffs, through Class Counsel, shall submit a response to any Compliance Report within 30 days of service, and allow Defendants 30 days to respond to any concerns Plaintiffs raise in their response. The Parties shall meet and confer regarding any issues related to the Compliance Report, and if the Parties are unable to resolve any such issues, either party may request a hearing with the Court.

D. Noncompliance with This Agreement. In the event of an alleged noncompliance with this Settlement Agreement, on an individual or class-wide basis, the complaining Class Member(s) or their legal representative(s) shall provide written notice of the alleged noncompliance, to Class Counsel at the email address identified in Section VIII.L. Defendants shall send a written response to Class Counsel within a reasonable period of time not to exceed 60 days after receiving written notice of the alleged noncompliance from Class Counsel. Within 90 days of Defendants' receipt of the written notice of the alleged noncompliance from Class Counsel, Defendants and Class Counsel shall meet and confer in a good faith effort to resolve the dispute informally. If the dispute cannot be resolved, the complaining Class Member(s) may move to enforce the Agreement on an individual basis before the Court and Class Counsel may elect to move to enforce the Agreement on an individual or class-wide basis before the Court. Once such a motion to enforce is initiated, the complaining Class Member shall not be removed from the United States unless and until the matter has been resolved in favor of Defendants.

VI. RELEASES

A. As of the Effective Date, Plaintiffs, by operation of the final approval entered by the Court, shall have fully, finally, and forever released, relinquished, and discharged the Defendants of and from any and all Settled Claims, and the Plaintiffs shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Defendants. This release shall not apply to claims that arise or accrue after termination of this Agreement.

B. Nothing in this Agreement shall be construed as affecting any Class Member's right or interest in challenging the adjudication of their individual asylum application, or challenging any related removal order. Individual Class Members expressly maintain the right to challenge the adjudication of such applications and orders.

C. The above releases do not include any release of claims to enforce the terms of this Agreement prior to termination of obligations under this Agreement as provided in Section IV.K.

VII. ATTORNEY FEES, COSTS, AND EXPENSES

Plaintiffs may attempt to negotiate, request, seek, or solicit attorney fees and/or litigation costs in this Action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other provision independent of this Agreement. Any application for fees and/or costs shall be filed no later than 30 days after the Court issues its final approval of this Settlement Agreement. Nothing in this Settlement Agreement shall be understood to limit Plaintiffs' right to seek such fees and/or costs.

VIII. ADDITIONAL PROVISIONS

A. Best Efforts. The Parties' counsel shall use their best efforts to cause the Court to grant preliminary approval of this Agreement and Settlement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the Settlement on the stated terms and conditions, and to obtain final approval of this Agreement and Settlement.

B. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to providing notice of the preliminary approval of the Agreement, the fairness hearing, and the final approval of the Agreement are subject to approval and change by the Court or by the written agreement of the Parties' counsel, without notice to Class Members.

C. Time for Compliance. The dates described herein refer to calendar days, unless otherwise stated. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

D. Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving the interpretation of this Agreement.

E. No Modification. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendants and approved by the Court.

F. Severability. If any provision of this Agreement is declared null, void, invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect.

G. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

H. Joint Drafting. In the event of ambiguity in or dispute regarding the interpretation of the Agreement, interpretation of the Agreement shall not be resolved by any rule providing for interpretation against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of the Agreement, the Agreement will be interpreted as if each Party participated in the drafting.

I. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, and assigns.

J. No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

K. Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

L. Notices. Except as specified elsewhere in this Agreement, all notices required or permitted under or pertaining to this Agreement shall be made in writing. Any notice shall be deemed to have been completed upon mailing or emailing. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

For the Plaintiffs:

DG-JOPClassCounsel@goodwinlaw.com

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For the Defendants:

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Vickie.LeDuc@usdoj.gov
Matthew.Haven@usdoj.gov

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

Consented and agreed to by:

DATED: June 7, 2024

For the Plaintiffs:

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For the Defendants:

Digitally signed by MATTHEW HAVEN
Date: 2024.06.17 15:54:42 -04'00'

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**admitted pro hac vice*

EXHIBIT A

CONTACTING CLASS COUNSEL LANGUAGE

You are receiving this notice because the person named above may have certain legal rights based on the settlement of the lawsuit called *J.O.P. et al. v. D.H.S. et al.*, Civil Action No. 8:19-CV-01944-SAG (D. Md.). You can find a copy of the *J.O.P. v. D.H.S.* settlement agreement here: [link]. Counsel appointed by the court to represent the class members in the *J.O.P. v. D.H.S.* lawsuit has asked that this office provide you class counsel's contact information if you would like to discuss class member rights that may be relevant in your situation. Class counsel is available to provide information and advice at no cost to class members. You are not obligated to consult class counsel about your rights, but class members have a right to do so. You may communicate confidentially with class counsel by sending an email to: DG-JOPClassCounsel@goodwinlaw.com.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*, Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY,** *et al.*, Defendants.	Civil Action No. 8:19-CV-01944-SAG

[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AND TO AMEND THE CLASS DEFINITION

The Parties have filed a Joint Motion for Preliminary Approval of a settlement agreement, and to amend the definition of the class certified in this Court's December 21, 2020 order. The Court has carefully considered the settlement agreement (the "Agreement") together with all exhibits thereto (annexed to the Parties' motion as Exhibit 1), all the filings related to the instant motion, and the record in this case. The Court hereby gives its preliminary approval of this settlement; finds that the Agreement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the Agreement ("Class Notice") to the certified Class, as amended herein, and to hold a Fairness Hearing; orders the Class Notice be made available to the certified Class, as amended herein, in accordance with the Agreement and this Order; and schedules a Fairness Hearing to determine whether the proposed settlement is fair, adequate, and reasonable.

IT IS HEREBY ORDERED THAT:

1. The Agreement is hereby incorporated by reference in this Order, and all terms or phrases used in this Order shall have the same meaning as in the Agreement.

2. The Court preliminarily approves the Agreement, provisionally finding that the terms of the Agreement are fair, reasonable, and adequate as required by Fed. R. Civ. P. 23(e)(2), and within the range of possible approval and sufficient to warrant providing notice to the certified Class, as amended herein.

3. The Court previously certified the class as "All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who filed an asylum application that was pending with the United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits."

4. The Parties agree, as set forth in the Agreement, that the definition of the certified Class should be amended as follows: "All individuals nationwide who prior to the effective date of the superseding memorandum discussed in Section III(A) [of the Agreement]: (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical

custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits." The Court adopts the parties' amended Class definition as set forth in the Agreement.

5. The Court finds that the proposed Class Notice and the proposed plan of distribution of the Class Notice meet the requirements of Federal Rule of Civil Procedure 23(e)(1) and hereby directs the parties to proceed with the notice distribution in accordance with the terms of the Agreement. Distribution of the Class Notice must be completed within 14 days of this Order.

6. The Court also approves the procedures set forth in Section IV(F) of the Agreement for any objections to the settlement. Any Class Member who wishes to object to the Agreement must do so within 60 days of this Order. The Parties will have 14 days following the objection period in which to submit answers to any objections that are filed.

7. The Court directs that a hearing be held on ____, 2024 (the "Fairness Hearing") to assist the Court in finally determining whether the settlement is fair, reasonable, and adequate; and whether Final Judgment should be entered dismissing with prejudice the claims in the above-captioned case but retaining jurisdiction in this Court to interpret and enforce the Agreement for its duration and to resolve any request for attorneys' fees and costs.

8. If the Agreement is not finally approved, then (a) all parties will proceed as if the Agreement had not been executed and this order not entered, preserving in that event all of their respective claims and defenses in this action; and (b) all releases given will be null and void. In such an event, this Court's orders regarding the Agreement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if not approved.

9. The Parties' Joint Motion for Preliminary Approval of Proposed Class Action Settlement and to Amend the Class Definition is hereby GRANTED. The Court hereby

preliminarily approves the proposed class-wide relief set forth in the Agreement, hereby approves the proposed form and plan of notice (addressed in the Agreement), and hereby schedules the Fairness Hearing. The Court also adopts the amended class definition, as set forth above.

IT IS SO ORDERED.

Dated this ___ day of ___, 2024.

_____
U.S. District Judge Stephanie A. Gallagher

EXHIBIT C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the District of Maryland
J.O.P., et al. v. U.S. Department of Homeland Security, et al.
Case No. 19-cv-01944-SAG

A federal court has authorized this notice. This is not an advertisement. You are not being sued or restrained.

If you were determined to be an "Unaccompanied Alien Child,"

And you filed an asylum application with U.S. Citizenship and Immigration Services,

You may be part of a federal class action settlement.

PLEASE READ THIS NOTICE CAREFULLY.

THIS NOTICE RELATES TO A PENDING CLASS ACTION LAWSUIT AND CONTAINS IMPORTANT INFORMATION ABOUT CLASS MEMBERS' RIGHTS TO OBJECT TO THE SETTLEMENT.

This notice is to tell you about a proposed Settlement Agreement of a class action lawsuit, *J.O.P. et al. v. U.S. Department of Homeland Security, et al.*, Case No. 19-cv-01944-SAG, pending in the United States District Court for the District of Maryland. The Court has granted preliminary approval of the proposed Settlement Agreement and has set a Final Approval Hearing (referred to as a Fairness Hearing in the proposed Settlement Agreement) to take place on **[DATE] at [TIME]** in Courtroom [X], [ADDRESS], to decide if the proposed Settlement Agreement is fair, reasonable, and adequate.

Final Approval Hearing: [DATE] at [TIME]

Note: this date and time are subject to change by Court Order and may change without further notice to the Class.

1. What is the purpose of this notice?

This notice has three purposes. The notice:

A. Tells you about the proposed Settlement Agreement and the Final Approval Hearing;

B. Explains how you may object—**and the deadline for doing so**—if you disagree with the proposed Settlement Agreement's terms; and

C. Explains how you can get more information.

If you are a Class Member, your legal rights are affected regardless of whether you act.

2. What is the *J.O.P. v. DHS* lawsuit about?

J.O.P. v. DHS is a class action lawsuit that was filed in federal court in Maryland in July 2019. A class action lawsuit is filed on behalf of a large group of people, rather than one person.

The Plaintiffs who brought the *J.O.P. v. DHS* lawsuit claimed that a 2019 policy created by the federal government about how to treat asylum applications filed by people previously determined to be an "Unaccompanied Child" (referred to as "Unaccompanied Alien Child" in the immigration laws) was unlawful.

Under that 2019 policy, U.S. Citizenship and Immigration Services ("USCIS") rejected the asylum applications of people in immigration court removal proceedings who had "Unaccompanied Child" determinations if they no longer met the definition of "Unaccompanied Child" on the date they filed the asylum application—even though under the policy that came before the 2019 policy, USCIS accepted such applications.

Under the challenged 2019 policy, USCIS also applied a one-year filing deadline to the asylum applications of individuals with previous "Unaccompanied Child" determinations if they no longer met the definition of "Unaccompanied Child" on the date they filed their asylum application—even though under the policy in place before the 2019 policy, USCIS held such applications exempt from the one-year deadline.

The Parties in this case are Plaintiffs J.O.P., M.E.R.E., K.A.R.C., E.D.G., and L.M.Z., all asylum seekers with previous "Unaccompanied Child" determinations ("Plaintiffs"), and the Defendants are U.S. Department of Homeland Security; Alejandro Mayorkas, Secretary of the U.S. Department of Homeland Security; U.S. Citizenship and Immigration Services; Ur Mendoza Jaddou, Director of U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; and Patrick J. Lechleitner, ICE Deputy Director and Senior Official Performing the Duties of the Director ("the Government").

Since August of 2019, the U.S. District Court for the District of Maryland ("Court") has ordered the Government to stop applying the 2019 policy. On December 21, 2020, the Court decided that this case could go forward as a nationwide class action.

The certified class includes all people nationwide who were determined to be an "Unaccompanied Child," filed an asylum application with USCIS that USCIS has not yet adjudicated on the merits, and on the date they filed the application were 18 years old or older or had a parent or legal guardian in the United States available to provide care and physical custody.

The Court also ordered the Government not to advocate against postponements of the immigration court proceedings of Class Members while they were waiting for USCIS to decide their pending asylum applications.

The Plaintiffs and the Government subsequently reached this Settlement Agreement. The Government denies any wrongdoing, but is settling the case in order to avoid the expense and resources to keep fighting the case. The Plaintiffs and their lawyers ("Class Counsel") believe that the proposed Settlement Agreement provides important rights and benefits for the Class, and that it is in the best interest of the Class to settle the case, while avoiding the expense and delay of continuing to fight the case in court. The Court has preliminarily approved the Settlement Agreement.

3. How do I know if I am part of the class?

The Court has certified the following class for purposes of this Settlement Agreement (the "Class"): "all individuals nationwide who prior to the date that is **90 days** after the date of the Court's final approval of this Settlement Agreement

(1) were determined to be an [Unaccompanied Child]; and

(2) who filed an asylum application that was pending with USCIS; and

(3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and

(4) for whom USCIS has not adjudicated the individual's asylum application on the merits."

In other words, you are part of the Class covered by the Settlement Agreement ("Class Member") if, before the date that is 90 days after the date the Court grants final approval of the Settlement Agreement, you (1) were determined to be an Unaccompanied Child; (2) filed an asylum application that was pending with USCIS; (3) on the date you filed your asylum application with USCIS, you were 18 years of age or older, or you had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) have not received an adjudication from USCIS on the merits of your asylum application. You do not need to live in Maryland to be part of the Class and benefit from the proposed Settlement Agreement.

Important: Some individuals who were previously determined to be Unaccompanied Children but have **not yet filed for asylum** with USCIS **can** become Class Members if they file an asylum application with USCIS before the deadline described above and meet the other requirements described above.

4. What does the Settlement Agreement provide?

This notice summarizes the proposed Settlement Agreement. You can learn how to get a copy of the full proposed Settlement Agreement in Part 7 below. In brief, under the proposed Settlement Agreement:

A. **USCIS asylum adjudications**. Class Members have a right to have USCIS decide their asylum applications on the merits, even if they are in removal proceedings, and USCIS will not apply the one-year deadline for filing asylum applications to Class Members' asylum applications. USCIS will decide the asylum application even if an Immigration Judge found that the Immigration Judge and not USCIS had the power to decide the asylum application. USCIS will decide the asylum application even if an Immigration Judge refuses to postpone the immigration court case while the asylum application is pending with USCIS.

   - **Limited exception**. USCIS can only refuse to decide a Class Member's asylum application on the merits if the Class Member was placed in immigration detention as an adult (meaning the person was 18 years old or older) before the Class Member filed their asylum application. If USCIS refuses to consider a Class Member's asylum application because of the Class Member's placement in adult immigration detention, the Class Member is entitled to certain protections specified in the proposed Settlement Agreement.

B. **Retractions of previous rejections**. USCIS will retract previous rejections of the asylum applications of qualifying Class Members and reinstate them for consideration under this proposed Settlement Agreement.

C. **Expedite process**. USCIS will create a process for Class Members in certain specified urgent circumstances to request that USCIS expedite their cases.

D. **New USCIS memo**. USCIS will issue a memo explaining the procedures it is agreeing to under the Settlement Agreement. This memo will apply to Class Members and other people who were previously determined by the Government to be an "Unaccompanied Child." USCIS will keep this memo in place for at least three years from its effective date.

E. **Motion practice in immigration court**. In a Class Member's removal proceedings, the Government lawyer representing the Department of Homeland Security will not argue against USCIS's authority over the Class Member's asylum application. The Government lawyer will generally join or not oppose the Class Member's request for dismissal of the removal proceedings or for a postponement to await USCIS's decision on the asylum application.

F. **Stays of removal**. ICE will not remove Class Members with final orders of removal from the United States while they are waiting for USCIS to decide their asylum application under the proposed Settlement Agreement.

G. **Motions to reopen**. If USCIS grants a Class Member asylum and the Class Member has a removal order, the Government lawyer who represents the Department of Homeland Security in the Class Member's removal proceedings will generally not oppose the Class Member's motion to reopen their removal case.

H. **Time period:** The Settlement Agreement will be in effect for a year and a half (548 days) after it goes into effect; except that the USCIS memo will remain in effect for at least three years.

I. **Suspected violations:** While the Settlement Agreement is in effect, if a Class Member believes the Government has violated the Settlement Agreement, that Class Member or their counsel may notify Class Counsel in writing of the suspected violation, and the Parties will seek to resolve the issue.

All of the terms of the proposed Settlement Agreement are subject to Court approval at a "Final Approval Hearing," discussed below.

5. What are the procedures for objections by class members?

If you **are** satisfied with the proposed Settlement Agreement, you do not have to do anything.

If you **are not** satisfied with the proposed Settlement Agreement, you do not have the right to opt out of the Settlement Agreement. However, you have the right to ask the Court to deny approval of the proposed Settlement Agreement by filing **a written objection**. You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement Agreement. If the Court denies approval, this lawsuit will continue. If that is what you want to happen, you must object.

Any **objection** to the proposed Settlement Agreement and/or notice of request to be heard at the Final Approval Hearing must be in writing and must:

A. Clearly identify the case name and number: *J.O.P. et al. v. U.S. Department of Homeland Security, et al.*, Case No. 19-cv-01944;

B. Include the Class Member's name (using only initials if the Class Member is under the age of 18), current address, and telephone number (or current address and telephone number of the Class Member's legal representative);

C. State the grounds upon which the claimed Class membership is based;

D. Include an explanation of why the Class Member objects to the proposed Settlement Agreement, including any supporting documentation;

E. Indicate whether the Class Member requests the opportunity to be heard at the Final Approval Hearing;

F. Be served on the Parties and filed with the Court.

> - To serve a notice of objection and/or request to be heard on the Parties, you must email the document to [X] or mail it to [X]. **It must be emailed or postmarked on or before [DATE]**; and
>
> - To file a notice of objection and/or request to be heard with the Court, you must mail it to [X] Clerk, United States District Court for the District of Maryland, Southern Division, [address], or file it in person at any location of the United States District Court for the District of Maryland. **It must be filed in person or postmarked on or before [DATE].**

Note: If your objection does not comply with all of the above requirements, the Court can ignore it or deny your request to be heard.

Any objection or notice of request to be heard can be filed under seal to avoid disclosure of personal identifying information on the public record.

6. When is the Final Approval Hearing, what is its purpose, and what are the potential outcomes?

WHEN:

The Final Approval Hearing is scheduled for [DATE] at [TIME] in Courtroom [X], [ADDRESS].

Note: this date and time are subject to change by Court Order and may change without further notice to the Class. The purpose of the Final Approval Hearing is for the Court to determine if the Settlement Agreement is fair, reasonable, and adequate.

> If you file a timely written objection that complies with the requirements listed in Part 5 above, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney at the Final Approval Hearing, you are responsible for hiring and paying that attorney.

If the Court **grants** final approval of the Settlement Agreement, Class Members will settle the legal claims identified in the Settlement Agreement and agree to stop fighting this lawsuit.

If the Court **does not grant** final approval of the proposed Settlement Agreement, the proposed Settlement Agreement will be void, and the Parties will continue to litigate this case in front of the Court. If that happens, there is no guarantee that: (1) the Court will rule in favor of the Class Members; (2) a favorable Court decision, if any, would be as favorable to the Class Members as this Settlement Agreement; or (3) any favorable Court decision would be upheld if the Government filed an appeal.

7. Where can I view a copy of the proposed Settlement Agreement or get additional information?

This notice summarizes the proposed Settlement Agreement. You can read the full proposed Settlement Agreement:

> A. By visiting this web page: [X]
>
> B. By accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.mdd.uscourts.gov/cgi-bin/iquery.pl;
>
> C. By visiting the office of the Clerk of Court for the United States District Court, District of Maryland, Southern Division, [ADDRESS], between the hours of 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays; or
>
> D. By contacting Class Counsel at the following mail or email addresses: DG-JOPClassAction@goodwinlaw.com.

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH QUESTIONS ABOUT THE PROPOSED SETTLEMENT.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*, Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY,** *et al.*, Defendants.	Civil Action No. 8:19-CV-01944-SAG

[PROPOSED] ORDER GRANTING JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

In consideration of the Parties' Joint Motion for Final Approval of Settlement Agreement, and the supporting Memoranda and documents referenced therein, having considered the entirety of the record in this case, and having held a Fairness Hearing on the Settlement Agreement dated June 17, 2024 (the "Agreement"), this Court hereby finds that:

1. The class action settlement of all claims asserted against Defendants in this action, as reflected in the Agreement, constitutes a fair, reasonable, and adequate settlement of all claims and is hereby given final approval under Fed. R. Civ. P. 23(e).

2. As amended in Paragraph [4] of the Preliminary Approval Order (ECF No.), the definition of the certified Class is: All individuals nationwide who prior to the effective date of the superseding memorandum discussed in Section III(A) of the Settlement Agreement: (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years

of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.

3. The Agreement was reached through arms-length negotiation and provides significant and certain benefits for the certified Class, and protects and serves the interests of the members of the certified Class.

4. The record shows, and this Court finds, that the notice to the Certified Class has been implemented in the manner approved by the Court in its Preliminary Approval Order (ECF No.).

5. Due and adequate notice of the proceedings having been given to the Certified Class, and a full opportunity having been offered to class members to participate in the Fairness Hearing, it is hereby determined that all class members are bound by this Final Approval Order.

6. This Court finds that the Agreement is reasonable because (i) the negotiations were extensive, contentious, arms-length, and facilitated by this Court; and (ii) the proponents of the Agreement are represented by experienced counsel.

7. The Court hereby finally approves in all respects the Agreement, and finds that the Agreement, the benefits to Class members, and all other aspects of the Agreement are fair, reasonable, adequate, and in the best interests of the certified Class, and within a range that responsible and experienced attorneys could accept considering all relevant factors and the relative merits of Plaintiffs' claims and Defendants' defenses, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the U.S. Constitution, and the Class Action Fairness Act. Therefore, the Agreement shall be consummated with its terms and provisions.

8. In making all of its findings, this Court has exercised its discretion in granting final approval of the Agreement based upon the entirety of the record, including all facts and circumstances of this litigation as presented to the Court in the submissions in support of approval of the Agreement.

ACCORDINGLY, IT IS HEREBY ORDERED, THAT:

A. The Motion for Final Approval of Settlement is GRANTED;

B. All claims asserted in this action against Defendants are hereby DISMISSED WITH PREJUDICE;

C. The Preliminary Injunction is hereby DISSOLVED;

D. The Parties are hereby directed to implement and consummate the Agreement according to the terms and provisions of the Agreement;

E. Should any party to the Agreement fail to honor the terms of this Order, the non-breaching party may petition for enforcement of this Order; and

F. The Court retains jurisdiction to enforce the Agreement during the term of the Agreement, and to resolve any request for attorneys' fees and costs.

IT IS SO ORDERED.

Dated this ___ day of ___, 2024.

_____
U.S. District Judge Stephanie A. Gallagher

EXHIBIT E

NOTICE OF FINAL CLASS ACTION SETTLEMENT

United States District Court for the District of Maryland
J.O.P., et al. v. U.S. Department of Homeland Security, et al.
Case No. 19-cv-01944-SAG

MORE INFORMATION: [X]

If you were determined to be an "Unaccompanied Alien Child,"

And you filed an asylum application with U.S. Citizenship and Immigration Services before [DATE],

You may have rights under a federal class action settlement.

A federal court has approved a Settlement Agreement in a class action lawsuit called *J.O.P. v. DHS*, Case No. 19-cv-01944-SAG (D. Md.). The *J.O.P. v. DHS* lawsuit is about the rights of people seeking asylum with U.S. Citizenship and Immigration Services who were previously determined to be an "Unaccompanied Child" (referred to as "Unaccompanied Alien Child" in the immigration laws).

The purpose of this notice is to tell you about the rights of *J.O.P. v. DHS* class members under the Settlement Agreement. **If you think this Settlement Agreement may relate to you, please read this notice.**

What is the *J.O.P. v. DHS lawsuit about?*

J.O.P. v. DHS is a class action lawsuit that was filed in federal court in Maryland in July 2019. A class action lawsuit is filed on behalf of a large group of people, rather than one person.

The Plaintiffs who brought the *J.O.P. v. DHS* lawsuit claimed that a 2019 policy created by the federal government about how to treat asylum applications filed by people previously determined to be an "Unaccompanied Child" was unlawful.

Under that 2019 policy, U.S. Citizenship and Immigration Services ("USCIS") rejected the asylum applications of people in immigration court removal proceedings who had "Unaccompanied Child" determinations if they no longer met the definition of "Unaccompanied Child" on the date they filed the asylum application—even though under the policy that came before the 2019 policy, USCIS accepted such applications.

Under the challenged 2019 policy, USCIS also applied a one-year filing deadline to the asylum applications of individuals with previous "Unaccompanied Child" determinations if they no longer met the definition of "Unaccompanied Child" on the date they filed their asylum application—even though under the policy in place before the 2019 policy, USCIS held such applications exempt from the one-year deadline.

The Parties in this case are Plaintiffs J.O.P., M.E.R.E., K.A.R.C., E.D.G., and L.M.Z., all asylum seekers with previous "Unaccompanied Child" determinations ("Plaintiffs"), and the Defendants are U.S. Department of Homeland Security; Alejandro Mayorkas, Secretary of the U.S. Department of Homeland Security; U.S. Citizenship and Immigration Services; Ur Mendoza Jaddou, Director of U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; and Patrick J. Lechleitner, ICE Deputy Director and Senior Official Performing the Duties of the Director ("the Government").

In 2019, the U.S. District Court for the District of Maryland ("Court") ordered the Government to stop applying the 2019 policy. On December 21, 2020, the Court decided that this case could go forward as a nationwide class action. The Court also ordered the Government not to advocate against postponements of the immigration court proceedings of Class Members while they were waiting for USCIS to decide their pending asylum applications. The Plaintiffs and the Government subsequently reached a Settlement Agreement, and the Court approved the Settlement Agreement on [DATE].

How do I know if I am part of the class?

You are part of the Class covered by the Settlement Agreement ("Class Member") if, before [DATE], you

(1) were determined to be an Unaccompanied Child;

(2) filed an asylum application that was pending with USCIS;

(3) on the date you filed your asylum application with USCIS, you were 18 years of age or older, or you had a parent or legal guardian in the United States who is available to provide care and physical custody; and

(4) have not received an adjudication from USCIS on the merits of your asylum application.

Important:

Some individuals who were previously determined to be Unaccompanied Children but have not yet filed for asylum with USCIS can become Class Members if they file an asylum application with USCIS before [DATE] and meet the other requirements described above.

What does the Settlement Agreement provide?

This notice summarizes the final Settlement Agreement. If you want to know more, you should read the Settlement Agreement or talk to your immigration lawyer, if you have one.

In brief, under the final Settlement Agreement:

A. **USCIS asylum adjudications**. Class Members have a right to have USCIS decide their asylum applications on the merits, even if they are in removal proceedings, and USCIS will not apply the one-year deadline for filing asylum applications to Class Members' asylum applications. USCIS will decide the asylum application even if an Immigration Judge found that the Immigration Judge and not USCIS had the power to decide the asylum application. USCIS will decide the asylum application even if an Immigration Judge refuses to postpone the immigration court case while the asylum application is pending with USCIS.

   - **Limited exception**. USCIS can only refuse to decide a Class Member's asylum application on the merits if the Class Member was placed in immigration detention as an adult (meaning the person was 18 years old or older) before the Class Member filed their asylum application. If USCIS refuses to consider a Class Member's asylum application because of the Class Member's placement in adult immigration detention, the Class Member is entitled to certain protections specified in the Settlement Agreement.

B. **Retractions of previous rejections**. USCIS will retract previous rejections of the asylum applications of qualifying Class Members and reinstate them for consideration under this Settlement Agreement.

C. **Expedite process**. USCIS will create a process for Class Members in certain specified urgent circumstances to request that USCIS expedite their cases.

D. **New USCIS memo**. USCIS will issue a memo explaining the procedures it is agreeing to under the Settlement Agreement. This memo will apply to Class Members and other people who were previously determined by the Government to be an "Unaccompanied Child." USCIS will keep this memo in place for at least three years from its effective date.

E. **Motion practice in immigration court**. In a Class Member's removal proceedings, the Government lawyer representing the Department of Homeland Security will not argue against USCIS's authority over the Class Member's asylum application. The Government lawyer will generally join or not oppose the Class Member's request for dismissal of the removal proceedings or for a postponement to await USCIS's decision on the asylum application.

F. **Stays of removal**. ICE will not remove Class Members with final orders of removal from the United States while they are waiting for USCIS to decide their asylum application under the Settlement Agreement.

G. **Motions to reopen**. If USCIS grants a Class Member asylum and the Class Member has a removal order, the Government lawyer who represents the Department of Homeland Security in the Class Member's removal proceedings will generally not oppose the Class Member's motion to reopen their removal case.

H. **Time period:** The Settlement Agreement will be in effect for a year and a half (548 days) after it goes into effect; except that the USCIS memo will remain in effect for at least three years.

I. **Suspected violations:** While the Settlement Agreement is in effect, if a Class Member believes the Government has violated the Settlement Agreement, that Class Member or their counsel may notify Class Counsel in writing of the suspected violation, and the Parties will seek to resolve the issue.

Where can I get more information?

This notice summarizes the Settlement Agreement. If you want to know more, you should read the full Settlement Agreement and talk to your immigration lawyer, if you have one. You can read the Settlement Agreement:

A. By visiting this web page: [X]

B. By accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.mdd.uscourts.gov/cgi-bin/iquery.pl;

C. By visiting the office of the Clerk of Court for the United States District Court, District of Maryland, Southern Division, [ADDRESS], between the hours of 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays; or

D. By contacting Class Counsel at the following mail or email addresses: DG-JOPClassAction@goodwinlaw.com.

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*, Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY,** *et al.*, Defendants.	Civil Action No. 8:19-CV-01944-SAG **DEFENDANTS' COMPLIANCE REPORT**

Pursuant to the settlement agreed to by the Parties and approved by the Court (ECF. No. X), Defendants respectfully submit the following Compliance Report. For their [first/second/etc.] Compliance Report, Defendants report the following steps taken pursuant to Section III of the Settlement Agreement between the Effective Date of the Settlement Agreement and [DATE OF COMPLIANCE REPORT]:

A. [Relating to Paragraph III.A] On [DATE], USCIS issued a superseding memorandum in accordance with Paragraph III.A of the Settlement Agreement. The public may find this memorandum online at [specify].

B. [Relating to Paragraph III.B] USCIS has complied with Paragraph III.B of the Settlement Agreement in determining jurisdiction over Class Members' asylum applications.

C. [Relating to Paragraph III.C] USCIS has issued Adverse Jurisdictional Determinations to [#] Class Members based on USCIS's determination that EOIR has jurisdiction because the Class Member did not meet the statutory UAC definition

(found at 6 U.S.C. § 279(g)(2)) at the time of filing their asylum application. USCIS certifies that all of those determinations were issued pursuant to Paragraph III.C of the Settlement Agreement, in that the basis for each Adverse Jurisdictional Determination was the Class Member's placement in adult immigration detention after a Prior UAC Determination but before filing their asylum application.

D. [Relating to Paragraph III.D] USCIS has complied with Paragraph III.D of the Settlement Agreement in determining its jurisdiction over Class Members' asylum applications.

E. [Relating to Paragraph III.E]

1. [Relating to Paragraph III.E.1] As of [DATE], USCIS has retracted Adverse Jurisdictional Determinations in the cases of [#] Class Members, as required by Paragraph III.C.2 of the Settlement Agreement. As of [DATE], USCIS [has/has not] fully complied with Paragraph III.E.1 of the Settlement Agreement.
2. [Relating to Paragraph III.E.2] As of [DATE], USCIS has retracted Adverse Jurisdictional Determinations in the cases of [#] Class Members, as required by Paragraphs III.B and/or III.D of the Settlement Agreement. As of [DATE], USCIS [has/has not] fully complied with Paragraph III.E.2 of the Settlement Agreement.
3. [Relating to Paragraph III.E.3] As of [DATE], USCIS has mailed notices of re-examination of jurisdictional determinations to [#] Class Members. As of [DATE], USCIS [has/has not] fully complied with Paragraph III.E.3 of the Settlement Agreement.

F. [Relating to Paragraph III.F] As of [DATE], USCIS has mailed notices to [#] Class Members notifying them that USCIS has released a hold placed on the application in or after March 2021. As of [DATE], USCIS [has/has not] fully complied with Paragraph III.F of the Settlement Agreement.

G. [Relating to Paragraph III.G] As of [DATE], USCIS has adopted procedures for expediting Class Members' cases as provided under Paragraph III.G of the Settlement Agreement. The public may find those procedures online at [specify].

Dated:

Respectfully submitted,

/s/

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*, Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY,** *et al.*, Defendants.	Civil Action No. 8:19-CV-01944-SAG

[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AND TO AMEND THE CLASS DEFINITION

The Parties have filed a Joint Motion for Preliminary Approval of a settlement agreement, and to amend the definition of the class certified in this Court's December 21, 2020 order. The Court has carefully considered the settlement agreement (the "Agreement") together with all exhibits thereto (annexed to the Parties' motion as Exhibit 1), all the filings related to the instant motion, and the record in this case. The Court hereby gives its preliminary approval of this settlement; finds that the Agreement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the Agreement ("Class Notice") to the certified Class, as amended herein, and to hold a Fairness Hearing; orders the Class Notice be made available to the certified Class, as amended herein, in accordance with the Agreement and this Order; and schedules a Fairness Hearing to determine whether the proposed settlement is fair, adequate, and reasonable.

IT IS HEREBY ORDERED THAT:

1. The Agreement is hereby incorporated by reference in this Order, and all terms or phrases used in this Order shall have the same meaning as in the Agreement.

2. The Court preliminarily approves the Agreement, provisionally finding that the terms of the Agreement are fair, reasonable, and adequate as required by Fed. R. Civ. P. 23(e)(2), and within the range of possible approval and sufficient to warrant providing notice to the certified Class, as amended herein.

3. The Court previously certified the class as "All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who filed an asylum application that was pending with the United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits."

4. The Parties agree, as set forth in the Agreement, that the definition of the certified Class should be amended as follows: "All individuals nationwide who prior to the effective date of the superseding memorandum discussed in Section III(A) [of the Agreement]: (1) were determined to be a UAC; and (2) who filed an asylum application that was pending with USCIS; and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical

custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits." The Court adopts the parties' amended Class definition as set forth in the Agreement.

5. The Court finds that the proposed Class Notice and the proposed plan of distribution of the Class Notice meet the requirements of Federal Rule of Civil Procedure 23(e)(1) and hereby directs the parties to proceed with the notice distribution in accordance with the terms of the Agreement. Distribution of the Class Notice must be completed within 14 days of this Order.

6. The Court also approves the procedures set forth in Section IV(F) of the Agreement for any objections to the settlement. Any Class Member who wishes to object to the Agreement must do so within 60 days of this Order. The Parties will have 14 days following the objection period in which to submit answers to any objections that are filed.

7. The Court directs that a hearing be held on ____, 2024 (the "Fairness Hearing") to assist the Court in finally determining whether the settlement is fair, reasonable, and adequate; and whether Final Judgment should be entered dismissing with prejudice the claims in the above-captioned case but retaining jurisdiction in this Court to interpret and enforce the Agreement for its duration and to resolve any request for attorneys' fees and costs.

8. If the Agreement is not finally approved, then (a) all parties will proceed as if the Agreement had not been executed and this order not entered, preserving in that event all of their respective claims and defenses in this action; and (b) all releases given will be null and void. In such an event, this Court's orders regarding the Agreement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if not approved.

9. The Parties' Joint Motion for Preliminary Approval of Proposed Class Action Settlement and to Amend the Class Definition is hereby GRANTED. The Court hereby

preliminarily approves the proposed class-wide relief set forth in the Agreement, hereby approves the proposed form and plan of notice (addressed in the Agreement), and hereby schedules the Fairness Hearing. The Court also adopts the amended class definition, as set forth above.

IT IS SO ORDERED.

Dated this ___ day of ___, 2024.

_____
U.S. District Judge Stephanie A. Gallagher