UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MIGRANT JUSTICE, a Vermont corporation, on its own behalf and on behalf of its members; JOSE ENRIQUE BALCAZAR SANCHEZ; ZULLY PALACIOS RODRIGUEZ; JOSE VICTOR GARCIA DIAZ, Plaintiffs, v. CHAD WOLF, Secretary of the U.S. Department of Homeland Security (DHS); NATHALIE ASHER, Acting Executive Associate Director, U.S. Immigration and Customs Enforcement (ICE); MATTHEW ALBENCE, ICE/DHS Executive Associate Director, Enforcement and Removal Operations; WANDA MINOLI, Vermont Department of Motor Vehicles (DMV) Commissioner; UNITED STATES OF AMERICA, Defendants.	Case No. 5:18-cv-192 (GWC)

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE AND DISMISSAL WITH PREJUDICE OF ALL CLAIMS IN THIS ACTION

Plaintiffs Jose Enrique Balcazar Sanchez, Zully Palacios Rodriquez, and Jose Victor Garcia Diaz (the "Individual Plaintiffs") and Migrant Justice (all together, "Plaintiffs"), and Defendants Chad Wolf,[1] Nathalie Asher, and Matthew Albence, in their official capacities at the U.S. Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE"), and the United States of America (all together, the "Federal Defendants") (Plaintiffs and Federal Defendants referred to herein collectively as the "Parties") hereby agree as follows:

[1] Pursuant to Fed. R. Civ. P. 25(d), Acting Secretary Wolf is substituted for former Acting Secretary Kevin McAleenan.

WHEREAS, pursuant to the First Amended Complaint (the "Action"), dated February 7, 2019, Plaintiffs have asserted claims for, among other things, injunctive relief and monetary relief against the above-named Federal Defendants arising from several ICE operations.

IT IS HEREBY AGREED, by and between the Parties, that the Action shall be resolved as between them as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to this Action under the terms and conditions set forth in this Stipulation for Compromise Settlement and Release and Dismissal with Prejudice of All Claims in this Action ("Stipulation for Compromise Settlement").

2. The United States of America, the proper Federal defendant in an action brought pursuant to the Federal Tort Claims Act, shall (i) within fourteen (14) days of the execution of the Stipulation for Compromise Settlement submit a request to the Judgment Fund of the United States Department of the Treasury; and (ii) use reasonable efforts to cause the Judgment Fund of the United States Department of Treasury to pay within one hundred twenty (120) days the sum of One Hundred Thousand Dollars ($100,000.00), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to this Action, that Plaintiffs or their guardians, heirs, executors, administrators or assigns, and each of them, may now have or may hereafter acquire against the United States of America, its agents, servants, employees, and former employees. For avoidance of doubt, the terms of this Stipulation for Compromise Settlement do not affect Plaintiffs' ability to bring future claims, demands or causes of action that are not predicated on the acts or omissions that gave rise to this Action against the United States of America, its agents, servants, employees, and former employees.

3. Payment of the settlement amount will be made by electronic funds transfer in

the sum of One Hundred Thousand Dollars ($100,000.00) to the account specified below, that account being a designated client trust account maintained by Plaintiffs' counsel:

A. [redacted]
B.
C.
D.
E.
F.
G.
H. Plaintiffs' Names:
Migrant Justice
Jose Enrique Balcazar Sanchez
Zully Palacios Rodriquez
Jose Victor Garcia

Plaintiffs' attorneys agree to distribute the settlement proceeds to Plaintiffs, and to obtain a dismissal of this Action with prejudice, with each party bearing its own fees, costs, and expenses.

4. Individual Plaintiffs have received deferred action for five (5) years, effective as of the date this Stipulation for Compromise Settlement is signed by all parties to this Action. Individual Plaintiffs may apply for employment authorization documents through submission of a Form I-765 to USCIS during the period of deferred action. If for any reason Individual Plaintiffs do not receive deferred action as of the execution of the Stipulation for Compromise Settlement, Individual Plaintiffs may void the Stipulation for Compromise Settlement. Within twenty-one (21) days of signing the Stipulation for Compromise Settlement, DHS will file a joint motion to terminate the Individual Plaintiffs' immigration proceedings and deliver to Individual Plaintiffs, through their counsel, letters memorializing their deferred action. If the motion to terminate the Individual Plaintiffs' immigration proceedings is not granted or is pending for longer than sixty (60) days, upon the Individual Plaintiffs' request, DHS will file a joint motion for Individual Plaintiffs' voluntary departure pursuant to Title 8, United States Code, Section 1229c.

5. ICE reserves the right to revoke continued deferred action and re-initiate immigration removal proceedings for an Individual Plaintiff who is convicted of (i) a felony; (ii)

a crime of driving while intoxicated or under the influence of alcohol or of prohibited substances; or (iii) any other crime for which a sentence of six (6) months or longer may be imposed that involves causing or threatening to cause personal injury to another person, or with extreme indifference to human life, creates a risk of personal injury to another person.

6. ICE agrees that it will not use any information gathered during discovery or litigation in this Action, or from the investigations, operations, and arrests at issue in this Action, against Individual Plaintiffs in any future immigration proceeding. ICE further agrees that it will not use any information from deferred-action requests or I-765 applications, if any, that may follow a grant of deferred action, against Individual Plaintiffs to establish removability in any future immigration proceeding.

7. Within sixty (60) days of the Parties' full execution of this Stipulation for Compromise Settlement, ICE agrees to re-circulate within the Vermont Field Office the May 17, 2019 Memorandum from then-Acting Secretary Kevin K. McAleenan regarding First Amendment protected activities (the "First Amendment Memorandum"), attached hereto as Exhibit A. ICE agrees to include the following language in a cover letter when re-circulating the First Amendment Memorandum: "Pursuant to the settlement agreement entered into in the matter *Migrant Justice, et. al. v. Wolf, et. al.*, 5:18-cv-192 (GWC), please find attached a memorandum from former Acting Secretary Kevin K. McAleenan, originally circulated on May 17, 2019, which explains the obligations of this Office to act in accordance with the First Amendment, including its commitment to not profile, target on account of, or discriminate against any individual or group for exercising First Amendment rights."

8. Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation for Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, whether known or unknown, which Plaintiffs may now have or may hereafter acquire against the Federal Defendants, their agents, servants, employees, and former employees, arising directly or indirectly from the acts or omissions that gave rise to this

Action. For avoidance of doubt, acceptance of the sums set forth in this Stipulation for Compromise Settlement does not affect Plaintiffs' ability to bring future claims, demands or causes of action that are not predicated on the acts or omissions that gave rise to this Action against the United States of America, its agents, servants, employees, and former employees.

9. This Stipulation for Compromise Settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States of America, Federal Defendants, their agents, servants, employees, or former employees, or on the part of any Plaintiffs, their guardians, heirs, executors, administrators or assigns. Federal Defendants expressly deny any liability to Plaintiffs, and Plaintiffs expressly deny any liability to Federal Defendants. This settlement is entered into by all parties for the purpose of compromising disputed claims set forth in the First Amended Complaint, including all claims brought under the Federal Tort Claims Act, and avoiding the expenses and risks of further litigation.

10. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorneys' fees owed by the Plaintiffs will be paid out of the settlement amount and not in addition thereto.

11. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in connection with this Action shall not exceed 25 percent of the amount of the compromise settlement.

12. It is also understood by and among the Parties that Plaintiffs have agreed to voluntarily dismiss all FTCA and non-FTCA claims in the First Amended Complaint against the Federal Defendants with prejudice.

13. This Stipulation for Compromise Settlement and any claim or dispute arising out of, or relating to, this Stipulation for Compromise Settlement shall be governed by and construed in accordance with the laws of the United States, or, to the extent state law applies, the State of Vermont, without regard to the conflict of law principles.

14. The persons signing this Stipulation for Compromise Settlement warrant and

represent that they possess full authority to bind the parties on whose behalf they are signing to the terms of the settlement.

15. This Stipulation for Compromise Settlement shall be binding upon and inure to the benefit of the parties and their principals, agents, representatives, heirs, successors, and assigns.

16. This Stipulation for Compromise Settlement contains the entire agreement among the Parties and cannot be modified except by a writing signed by the Parties. This Stipulation for Compromise Settlement embodies the complete agreement and understanding among the Parties and supersedes and preempts any prior agreements and understandings concerning the subject matter hereof.

17. The Parties have carefully read this Stipulation for Compromise Settlement, know its contents, and freely and voluntarily agree to all of its terms and conditions, and have freely and voluntarily affixed their signatures hereto with full and complete authority to do so. Each Party acknowledges that it/he/she has been represented by independent legal counsel of its choice throughout all the negotiations that preceded the execution of this Stipulation for Compromise Settlement, and this Stipulation for Compromise Settlement has been executed with the consent and upon the advice of such independent legal counsel. Except as otherwise provided herein, none of the Parties nor their employees, agents, or attorneys has made any representation to any other Party concerning this Stipulation for Compromise Settlement or the validity or merit of any of their claims, and none of the Parties is relying upon any such representation in executing this Stipulation for Compromise Settlement. The Parties acknowledge that they are acting upon their own best judgment, belief, and knowledge of the nature and validity of any and all claims or potential claims and advice of their own counsel in making this Stipulation for Compromise Settlement.

18. Because each Party and counsel for each Party has reviewed this Stipulation for Compromise Settlement and contributed to the drafting and/or approval of this Stipulation for Compromise Settlement, the normal rule of construction to the effect that any ambiguities are

to be resolved against the drafting party shall not be employed in the interpretation of this Stipulation for Compromise Settlement.

19. This Stipulation for Compromise Settlement may be executed in counterparts and by facsimile or other form of optical transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. If there is a change in the law that affects any Plaintiff, nothing in this Stipulation for Compromise Settlement prevents him or her from applying for any status for which he/she would otherwise be eligible.

21. Nothing in this Stipulation for Compromise Settlement shall be construed as a concession of removability or alienage by any Plaintiff. This Stipulation for Compromise Settlement does not affect the ability of any Plaintiff to present himself or herself for entry or admission into the United States, or to seek to adjust or regularize his or her status, subsequent to the date of this Stipulation for Compromise Settlement, so long as he or she is authorized to do so under applicable United States law. This Stipulation for Compromise Settlement does not affect the ability of Federal Defendants, including all immigration authorities of the United States of America, to use any information related to this Action for impeachment or rebuttal purposes if any Individual Plaintiff makes a false statement to the Federal Defendants when presenting himself or herself for entry or admission into the United States, or applying for any immigration benefit, including but not limited to adjusting or regularizing his or her status in the United States.

DATED at Brooklyn, New York on this 28 day of Oct. 2020.

SETH D. DuCHARME
Acting United States Attorney
Eastern District of New York

By: _____

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Counsel for Federal Defendants

AGREED AND CONSENTED TO:

Dated: Burlington, VT
October 20, 2020

_____
JOSE ENRIQUE BALCAZAR SANCHEZ

On the 26th day of October in the year 2020, before me, the undersigned JOSE ENRIQUE BALCAZAR SANCHEZ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Barbara Price Burke.
Notary Public

Dated: Burlington, VT
October 20, 2020

_____
ZULLY PALACIOS RODRIGUEZ

On the 20th day of October in the year 2020, before me, the undersigned ZULLY PALACIOS RODRIGUEZ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Barbara Paine
Notary Public

Dated: Burlington, VT
Oct 28, 2020

JOSE VICTOR GARCIA DIAZ

On the 28th day of October in the year 2020, before me, the undersigned JOSE VICTOR GARCIA DIAZ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that byhis/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Barbara Prine, Notary Public

Dated: Burlington, VT
October 20, 2020

Thelma G Garcia Baltazar
MIGRANT JUSTICE

On the 20th day of October, in the year 2020, before me, the undersigned _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the instrument.

Barbara Prine
Notary Public

DATED at New York, New York on this 28TH day of October 2020.

By: Joel M. Cohen

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EXHIBIT A

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 17, 2019

MEMORANDUM FOR: All DHS Employees

FROM: Kevin K. McAleenan
Acting Secretary

SUBJECT: Information Regarding First Amendment Protected Activities

I am proud of the work you do every day to protect our Homeland. You serve as America's Frontline and your commitment to the highest ethical and moral principles is a testament to each of you, the founding values of our Department, and our nation. It is in this spirit that I write to you today to emphasize – as you all know – that the privilege of administering and enforcing federal laws carries with it the responsibility for upholding the principles of professionalism, impartiality, courtesy, and respect for civil rights and civil liberties.

DHS does not profile, target, or discriminate against any individual for exercising his or her First Amendment rights.[1] Under the Privacy Act of 1974, all DHS personnel[2] are prohibited from maintaining records that describe how a U.S. citizen (USC) or alien lawfully admitted for permanent residence (LPR)[3] exercises his or her First Amendment rights, "unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."[4]

Information, in any form, regarding how an individual exercises First Amendment rights shall include (among other things):

1. Information about an individual's religious beliefs and practices;
2. Information about an individual's political or personal beliefs or associations, academic or scientific inquiries, or the expressions thereof;

[1] The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.
[2] For purposes of this memorandum, "DHS personnel" includes all DHS employees, including those who are law enforcement agents and officers and those in the intelligence community, as well as those performing work on behalf of DHS employees, such as contractors.
[3] To the extent that a person's status is unknown or unclear, for the purposes of this policy that person shall be treated as an "individual" covered by the Privacy Act. 5 U.S.C. § 552a(a)(2).
[4] 5 U.S.C. § 552a(e)(7).

3. Information about an individual's (including journalists, attorneys, academics, representatives of non-governmental organizations, etc.) reporting activities and documentation; or,
4. Information about an individual's associations with others for lawful purposes, including participation in protests or other non-violent demonstrations against government policy or actions.

Individuals' First Amendment rights are protected regardless of the medium of their communications. These principles apply to communications such as oral or written speech (both in paper and electronic form); non-verbal communications such as art works; and, in some instances, to commercial speech and gestures (such as physical rituals associated with prayer).

With those First Amendment rights in mind, I direct that DHS personnel shall not collect, maintain in DHS systems, or use information protected by the First Amendment ***unless*** (a) an individual has expressly granted their consent for DHS to collect, maintain, and use that information; (b) maintaining the record is expressly authorized by a federal statute; or (c) that information is relevant to a criminal, civil, or administrative activity relating to a law DHS enforces or administers. In addition, DHS personnel should not pursue by questioning, research or other means, information relating to how an individual exercises his or her First Amendment rights unless one or more of the same conditions applies.

Express Statutory Authorization

DHS agencies may collect and maintain records regarding First Amendment activity when doing so is *expressly authorized by statute*. As explained in longstanding guidance from the Office of Management and Budget (OMB), a statute need not specifically address the maintenance of records of First Amendment activities if it references activities that are relevant to a determination concerning an individual.[5] Thus, for example, DHS personnel may collect information on First Amendment protected activity when that activity is relevant to the granting or denial of a pending application.

Consent of the Individual

Records on First Amendment activity may be maintained if the individual voluntarily provides it, thereby consenting to its use by DHS. For example, "if an individual volunteers information on civic or religious activities in order to enhance his chances of receiving a benefit, such as

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[5] Privacy Act Implementation, Guidelines and Responsibilities, 40 Fed. Reg. 28,948, 28,965 (July 9, 1975) (hereinafter OMB Guidelines). The Guidelines specifically cite to the Immigration and Nationality Act (INA) as an example: "[S]ince the Immigration and Nationality Act makes the possibility of religious or political persecution relevant to a stay of deportation, the information on these subjects may be admitted in evidence, and therefore would not be prohibited by [subsection (e)(7)." OMB Guidelines, at 28,965. Many other INA provisions potentially involve consideration of First Amendment activity. E.g., 8 U.S.C. 1101(a)(43) (definition of refugee, for purpose of refugee and asylum eligibility determinations, includes persecution based on membership in social group, religion, or political opinion); 8 U.S.C. 1182(a)(3)(B) (inadmissibility of any alien who, inter alia, "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization"); 8 U.S.C. 1182(a)(3)(D) (ground of inadmissibility for membership or affiliation with the Communist or other totalitarian party); 8 U.S.C. 1182(a)(3)(F) (ground of inadmissibility for association with terrorist organizations); 8 U.S.C. 1227(a)(4)(B) (deportability of aliens admitted to the United States if described in terrorism-related grounds of inadmissibility); 8 U.S.C. 1424 (prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government).

executive clemency, the agency may consider information thus volunteered."[6] As applied to DHS, individuals may voluntarily provide consent in submitting their associations and beliefs when applying for naturalization pursuant to filing USCIS Form N-400[7] or may proactively provide information in written materials, including correspondence, or during an inspection or encounter.

Relevant to Law Enforcement Activity

If the use of information regarding First Amendment protected activities is not otherwise covered by one or both of the exceptions discussed above (explicit statutory authority and consent), DHS personnel may include such information in DHS systems if the information is pertinent to and within the scope of an authorized criminal, civil, or administrative law enforcement activity.[8]

For example, information about First Amendment protected activities is pertinent to and within the scope of DHS's administration or enforcement of a statute, regulation, or executive order when all DHS personnel:

1. Document questions and responses relating to an individual's occupation, purpose for international travel, or any merchandise the individual seeks to bring across the border;
2. Document questions, responses, or other information to validate information supplied by an individual or determine whether potential criminal, civil, or administrative violations exist relating to the laws that DHS enforces or administers;
3. Document journalistic or scientific research, academic inquiry, and/or analysis or questions and responses relating to information regarding an individual indicating a potential violation of a law DHS enforces or administers, or a threat to border security, national security, officer safety, or public safety;
4. Document research and/or analysis relating to activities protected by the First Amendment to the extent that it may facilitate an individual's travel by, for example, verifying information provided by the individual —(e.g., validating a visa based on a religious purpose); or,
5. Take into account information regarding religion in order to identify whether a reasonable accommodation for an individual's religious beliefs would be appropriate. This may include subsequent documentation of relevant information in DHS records regarding the action (for example, noting that a certain action was undertaken as an accommodation or noting that an accommodation was requested or deemed appropriate).

Each of us is called to do an extraordinarily important job for our nation. In executing this mission, it is my job to ensure that you are empowered to do so in accordance with our highest moral, ethical, and legal obligations. To this end, I have tasked the DHS Office for Civil Rights and Civil Liberties and the DHS Privacy Office to review existing guidance and develop new

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[6] OMB Guidelines, at 28965.

[7] It must be noted that DHS/USCIS may also collect this information pursuant to its statutory authority in determining whether the applicant comes under section 313 of the INA's (8 U.S.C. 1424) prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government Thus, collecting and maintaining this information is lawful both because of express statutory authorization as described above, and because the applicant consented to providing it by signing and filing the application.

[8] DHS may still maintain records consistent with 552a(e)(7) even if there is no ongoing or current law enforcement investigation.

guidance, where appropriate, to assist the operational components in implementing this memorandum.[9]

As you execute your mission each day, our Privacy and Civil Rights and Civil Liberties colleagues stand by to assist with any further questions or concerns you may have on this topic. Please contact Jonathan R. Cantor, Acting Chief Privacy Officer and Peter Mina, CRCL Deputy Officer for Programs and Compliance, and their staffs with those questions. Please contact your Component Counsel Offices with any legal questions.

[9] Nothing in this policy memorandum or tasking otherwise impairs the statutory or delegated authorities and responsibilities of the Privacy Office or the Office for Civil Rights and Civil Liberties, including the authority to "investigate complaints and information indicating possible abuses of civil rights or civil liberties" under 6 U.S.C. § 345 or investigate noncompliance DHS privacy policies under 6 U.S.C. § 142.