

# EXHIBIT 1

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11  
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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 KELVIN HERNANDEZ ROMAN,  
16 BEATRIZ ANDREA FORERO  
17 CHAVEZ, MIGUEL AGUILAR  
ESTRADA, on behalf of themselves and  
all others similarly situated,

18 Plaintiffs-Petitioners,

19 v.

20 ALEJANDRO MAYORKAS, Secretary,  
21 U.S. Department of Homeland Security;  
22 PATRICK J. LECHLEITNER, Deputy  
Director and Senior Official Performing  
the Duties of the Director for U.S.  
23 Immigration and Customs Enforcement;  
24 ERNESTO SANTACRUZ, JR., Acting  
Field Office Director, Los Angeles,  
Enforcement and Removal Operations,  
25 U.S. Immigration and Customs  
Enforcement, and FERETI SEMAIA,  
26 Facility Administrator, Adelanto ICE  
Processing Center,

27 Defendants-Respondents.  
28

Case No. 5:20-cv-00768-TJH-PVC

**SETTLEMENT AGREEMENT  
AND RELEASE**

1                                   **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2           Plaintiffs in the above-captioned matter, Kelvin Hernandez Roman, Beatriz  
3 Andrea Forero Chavez, and Miguel Aguilar Estrada, on behalf of themselves and all  
4 Class Members of the certified class they represent (collectively, “Plaintiffs”), and  
5 Defendants Alejandro Mayorkas, Secretary, U.S. Department of Homeland  
6 Security; Patrick J. Lechleitner, Deputy Director and Senior Official Performing the  
7 Duties of the Director for U.S. Immigration and Customs Enforcement; Ernesto  
8 Santacruz, Jr., Acting Field Office Director, Los Angeles, Enforcement and  
9 Removal Operations, U.S. Immigration and Customs Enforcement, and Fereti  
10 Semaia, Facility Administrator, Adelanto ICE Processing Center (collectively,  
11 “Defendants” and with Plaintiffs “the Parties”) through their counsel, enter into this  
12 Class Action Settlement Agreement and Release (“Agreement”), as of the date it is  
13 executed by all Parties (the “Agreement Date”) and effective upon approval of the  
14 Court pursuant to Federal Rule of Civil Procedure 23(e).

11                                   **WHEREAS:**

12           On April 13, 2020, Plaintiffs filed in the District Court for the Central  
13 District of California a Petition for Writ of Habeas Corpus and Class Action  
14 Complaint for Declaratory and Injunctive Relief, on behalf of themselves and all  
15 others similarly situated, against Defendants.

16           On April 23, 2020, the District Court granted provisional class certification  
17 and entered a preliminary injunction ordering Defendants to reduce the population  
18 of the Adelanto ICE Processing Center (“Adelanto”) and take other measures to  
19 protect Class Members against the risk of contracting COVID-19. Defendants  
20 appealed both orders.

21           On May 5, 2020, the Ninth Circuit Court of Appeals granted in part and  
22 denied in part Defendants’ motion to stay the District Court’s preliminary  
23 injunction pending appeal.

24           On June 17, 2020, the District Court granted Plaintiffs’ motion for class-wide  
25 bail and established a process to make individualized bail determinations for Class  
26 Members. Defendants appealed.

27           On September 22, 2020, the District Court granted Plaintiffs’ motion for non-  
28 provisional class certification.

          On September 23, 2020, the Ninth Circuit Court of Appeals “affirm[ed] the  
portions of the preliminary injunction order concluding that the district court  
possesses the power to grant injunctive relief and that Plaintiffs are likely to prevail  
on the merits of their due process claims.” In light of conditions at Adelanto  
“evolving rapidly,” including a developing COVID-19 outbreak, the Ninth Circuit

1 “vacate[d] the provisions of the preliminary injunction that ordered specific  
2 measures to be implemented at Adelanto,” and remanded for the District Court to  
3 “assess what relief current conditions may warrant.”

4 On September 29, 2020, the District Court issued a Modified Preliminary  
5 Injunction and Additional Findings of Fact ordering Defendants to take certain  
6 measures to protect Class Members against the risk of contracting COVID-19.

7 On October 13, 2020, the Ninth Circuit dismissed Defendants’ appeal of the  
8 class-wide bail orders for lack of jurisdiction.

9 On October 15, 2020, the District Court issued a Population Reduction Order,  
10 ordering Defendants to reduce the population of Adelanto to at or below 475  
11 people.

12 On October 20, 2020, the District Court appointed a Special Master to, *inter*  
13 *alia*, “[m]onitor and enforce the Government’s compliance with the Court’s  
14 Modified Preliminary Injunction, the Adelanto Population Reduction Order.”

15 Defendants subsequently appealed the Modified Preliminary Injunction and  
16 the Population Reduction Order.

17 On March 19, 2021, Plaintiffs informed the District Court that Class Member  
18 Martin Vargas had passed away after contracting COVID-19 at Adelanto. The  
19 District Court directed the Special Master to investigate Mr. Vargas’s death and  
20 issue a Report and Recommendation to the Court. On August 11, 2021, the District  
21 Court adopted the Special Master’s Report and Recommendations, ordering  
22 Defendants to comply with certain reporting requirements and to pay certain legal  
23 fees of Mr. Vargas’s immigration lawyer. Defendants appealed. In addition to this  
24 Agreement, the Parties have agreed to a written settlement agreement and release  
25 addressing matters related to that Report and Recommendation and the Court’s  
26 adoption of that Report and Recommendation (“Vargas Settlement Agreement”).

27 On June 3, 2021, following a Settlement Assessment conference, the Ninth  
28 Circuit Mediator’s Office entered an order consolidating all pending appeals in this  
Action and vacating the briefing schedules to permit the Parties to discuss the  
possibility of settlement.

The Parties have since conducted discussions and arms-length negotiations  
with a view toward settling all matters in dispute. In light of the expense and  
inconvenience of additional, potentially protracted litigation, and in consideration of  
the representations, promises, and agreements set forth herein, the Parties have  
agreed to the settlement and dismissal of the Action with prejudice. Counsel for  
Plaintiffs have concluded that the terms and conditions of this Agreement are fair,  
reasonable, and adequate.

1 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and  
2 among the Parties, through their respective attorneys, subject to the approval of the  
3 Court pursuant to Federal Rule of Civil Procedure 23(e), in consideration of the  
4 benefits flowing to the Parties from this Agreement, that this Agreement shall  
constitute a full, fair, and complete settlement of the Action, upon and subject to the  
following terms and conditions.

5 **I. DEFINITIONS**

6 Wherever used in this Agreement, the following terms have the meanings set  
7 forth below:

- 8 A. “Action” means the civil action captioned Hernandez Roman v.  
9 Mayorkas, United States District Court for the Central District of  
10 California, Case No. 20-cv-00768-TJH-PVC.
- 11 B. “Adelanto Staff” includes employees, contractors, sub-contractors, staff,  
12 and consultants who work at Adelanto, including but not limited to  
13 employees, contractors, sub-contractors, staff, and consultants of ICE and  
GEO.
- 14 C. “Agreement Date” means the date this Agreement is executed by all  
Parties.
- 15 D. “Class Member(s)” means all individuals who:
- 16 i. Are currently detained in civil immigration detention at the  
17 Adelanto Immigration and Customs Enforcement Processing  
18 Center;
- 19 ii. Were detained in civil immigration detention at the Adelanto  
20 Immigration and Customs Enforcement Processing Center at any  
21 time between March 23, 2020, and May 11, 2023 but have been  
22 transferred by U.S. Immigration and Customs Enforcement to  
23 another immigration detention facility, regardless of whether the  
other detention facility is within the Central District of California;  
or
- 24 iii. Were detained in civil immigration detention at the Adelanto  
25 Immigration and Customs Enforcement Processing Center at any  
26 time between March 23, 2020, and May 11, 2023 but have been  
27 released pursuant to a temporary restraining order, a preliminary  
28 injunction, or other temporary release order issued by this Court,  
including a temporary release order issued in a separately and

1 previously filed individual habeas case subsequently stayed  
2 pursuant to the Court’s April 23, 2020 order, ECF No. 52.

- 3 E. “Complaint” means the Petition for Writ of Habeas Corpus and Class  
4 Action Complaint for Injunctive and Declaratory Relief filed by Plaintiffs  
5 on April 13, 2020.
- 6 F. “Defendants” means Alejandro Mayorkas, Secretary, U.S. Department of  
7 Homeland Security; Tae Johnson, Director, U.S. Immigration and  
8 Customs Enforcement; David Marin, Director of the Los Angeles Field  
9 Office, Enforcement and Removal Operations, U.S. Immigration and  
10 Customs Enforcement; and James Janecka, Warden, Adelanto ICE  
11 Processing Center; and their predecessors and successors.
- 12 G. “District Court” is the United States District Court for the Central District  
13 of California.
- 14 H. “Effective Date” means the date upon which this Agreement shall become  
15 effective, as set forth in Section VI below.
- 16 I. “Final Approval Hearing” means a hearing set by the Court to (i)  
17 determine the fairness, adequacy, and reasonableness of the Agreement;  
18 (ii) determine that the Agreement and associated Settlement satisfy all  
19 requirements of Federal Rule of Civil Procedure 23, and all other  
20 applicable law; (iii) resolve any objections to the Settlement; and (iv)  
21 enter the Final Approval Order and Judgment.
- 22 J. “Final Approval Order” means a Court order, substantially the same as  
23 Exhibit 3, granting final approval of this Agreement; holding this  
24 Agreement to be fair, reasonable, adequate, and in the best interests of the  
25 class; finding that class representatives and class counsel have adequately  
26 represented the class; ordering that the Parties implement this Agreement  
27 in accordance with its terms and provisions; entering final judgment; and  
28 retaining jurisdiction over the interpretation, implementation, and  
enforcement of this Agreement.
- K. “Motion for Final Approval” means the motion filed with the Court for  
final approval of the Agreement.
- L. “Notice Date” means the date that notice is provided to Class Members  
pursuant to Section V.C.
- M. “Plaintiffs” means Kelvin Hernandez Roman, Beatriz Andrea Forero  
Chavez, and Miguel Aguilar Estrada, and the Class Members of the  
certified class they represent.

1 N. “Plaintiffs’ counsel” or “Class Counsel” refers to the following attorneys:  
2 Eva Bitran, American Civil Liberties Union (“ACLU”) of Southern  
3 California and Samir Deger-Sen, Elyse Greenwald, Amanda Barnett, and  
4 Leah Wisser, Latham & Watkins, LLP.

5 O. “Preliminary Approval Order” means a Court order, substantially the  
6 same as Exhibit 1, granting preliminary approval of the Settlement Class  
7 and Subclasses; finding the pre-requisites of Rule 23 are met; finding  
8 cause to believe this Agreement is fair, reasonable, and adequate, is within  
9 the range of possible approval, and has been negotiated in good faith at  
10 arm’s length; finding that Notice is warranted; approving the Class  
11 Notice, substantially in the form of Exhibit 2; and setting a hearing to  
12 consider Final Approval of the settlement and any objections thereto.

13 P. “Settled Claims” means all claims, demands, rights, liabilities and causes  
14 of action for declaratory or equitable relief, including injunctive relief,  
15 known or unknown, that relate to risks associated with COVID-19 inside  
16 Adelanto that existed prior to the Agreement Date, and which were or  
17 could have been alleged in the Action based on the same common nucleus  
18 of operative facts alleged.

## 19 **II. MITIGATION OF COVID-19 RISK AT ADELANTO**

### 20 **A. Intake Ban**

- 21
- 22 i. Upon execution of this Agreement as discussed in Section V.A., the  
23 parties shall jointly submit an ex parte application requesting that the  
24 Court temporarily lift the intake ban imposed by the Modified  
25 Preliminary Injunction, ECF No. 596, and Amended Population  
26 Reduction Order, ECF No. 914, pending the fairness hearing, and  
27 that the Court permanently lift the ban upon the Effective Date.

### 28 **B. Population Cap**

- 29
- 30 i. The population cap of 475 imposed by the Amended Population  
31 Reduction Order, ECF No. 914, will be lifted upon the Effective  
32 Date.
- 33 ii. Defendants will use best efforts to ensure that Adelanto follows  
34 applicable CDC guidance and ICE requirements for COVID-19. If,  
35 over a period of five business days, there is a preponderance of  
36 specific evidence that one or more Adelanto Staff Member(s)  
37 willfully fails to follow such applicable guidance and the terms of  
38 this Agreement, and the facility has not reasonably addressed such  
39 failure, ICE will consider, but not be required to implement, a



1 temporary pause of intakes to Adelanto.

2  
3 **C. Vaccinations**

4 i. Subject to availability, and so long as consistent with CDC guidance  
5 and the operative ICE guidance, and no more than what is specified  
6 in this Agreement, Defendants will offer COVID-19 vaccines:

- 7 1. Within fourteen days of intake to all new Class Members,  
8 detained at Adelanto, who have not yet received the vaccine,  
9 unless medically contraindicated;
- 10 2. On a weekly basis to any Class Member, detained at  
11 Adelanto, who initially declined the vaccine, unless medically  
12 contraindicated.
- 13 3. Defendants will:
  - 14 a. Provide comprehensive information about vaccines to  
15 all Class Members, detained at Adelanto, who are not  
16 fully vaccinated, including new intakes. Written  
17 information shall be provided in a language the Class  
18 Member understands, except in cases of a language not  
19 commonly used by other detainees at the facility, where  
20 such information may be provided by way of an  
21 interpreter;
  - 22 b. Provide a clear process to request vaccines that is  
23 conveyed to Class Members, detained at Adelanto,  
24 during weekly announcements;
  - 25 c. Provide timely access to additional doses for Class  
26 Members, detained at Adelanto, as needed, so long as  
27 the Class Member remains in custody at Adelanto, and  
28 with the understanding that ICE will not maintain  
custody solely to facilitate vaccination;
  - d. When feasible, implement at Adelanto any new CDC  
recommendations regarding vaccines, subject to  
availability.
  - e. Ensure that members of the Medical staff shall provide  
regular, in-person, presentations on the vaccines to  
Class Members, detained at Adelanto, including new



1 intakes. Presentations will be conducted in English and  
2 Spanish at least twice per month. Class Members who  
3 speak neither English nor Spanish will be offered the  
4 same presentation by way of an interpreter as needed.

4 **D. New Intakes**

- 5 i. Defendants shall, so long as consistent with CDC guidance and the  
6 operative ICE guidance, and no more than is specified in this  
7 Agreement, and subject to logistical problems that arise due to lack  
8 of space (or lack of available space) due to gender, risk  
9 classification, and other issues:
- 10 1. Use best efforts to ensure that new intakes transferred from  
11 other ICE facilities are screened for COVID-19 in accordance  
12 with the operative ICE guidance.
  - 13 2. Make best efforts to ascertain the COVID-19 vaccination  
14 status of new intakes from individuals apprehended at ports of  
15 entry or near a land border or in the community and offer tests  
16 to any new intakes.
  - 17 3. If an individual tests positive for COVID-19 following arrival  
18 and intake at Adelanto, ICE will request that Adelanto  
19 institute standard isolation procedures, according to applicable  
20 ICE guidance. Individuals known to be COVID-19 positive  
21 and who are symptomatic upon intake should not be housed  
22 with individuals who have tested negative or are awaiting test  
23 results.
  - 24 4. Make best efforts to ensure that unvaccinated individuals who  
25 have had close contact with an individual known to have  
26 COVID-19, but who have no COVID-19 symptoms, are  
27 offered tests and, if applicable, isolated if required by the  
28 operative ICE and CDC guidance.
  5. Makes best efforts to ensure isolation of all new intakes who  
have a fever and are exhibiting symptoms of COVID-19 upon  
arrival and/or test positive. Class Members who are returning  
to Adelanto after a medical visit or other temporary departure  
and are fully vaccinated and asymptomatic are exempt from  
this requirement.

**E. Testing, Antivirals, and Isolation**

1 i. Defendants shall:

- 2 1. If required by applicable ICE and CDC guidance, request that  
3 the facility conduct screening testing of all Adelanto staff and  
4 detained Class Members whenever there are three or more  
5 positive COVID-19 tests in one week among any combination  
6 of Adelanto staff and/or Class Members. Screening testing  
7 under this provision shall not be required if positive COVID-  
8 19 tests are limited to members of a single new intake group  
9 or to Adelanto Staff who have no access to detained Class  
10 Members.  
11  
12 2. Use best efforts to ensure that Adelanto is offering COVID-19  
13 testing as consistent with CDC guidance and no more than is  
14 specified in this Agreement to any Class Member (i) who  
15 exhibits signs or symptoms consistent with COVID-19 or (ii)  
16 who has been in close contact with a COVID-19 positive  
17 individual.  
18  
19 3. Use best efforts to ensure that Adelanto is providing Class  
20 Members with written copies of their COVID-19 test results  
21 within 48 hours of receipt.  
22  
23 4. Use best efforts to confirm that the facility is, so long as  
24 consistent with the most current CDC and clinical guidance  
25 and no more than is specified in this Agreement, timely  
26 offering detainees diagnosed with COVID-19 anti-viral  
27 medication to treat COVID-19, subject to the detainee  
28 meeting clinical criteria for, and the absence of any contra-  
indications for, such treatment.  
29  
30 5. Use best efforts to ensure that Adelanto is prohibiting staff  
31 who have tested positive from entering Adelanto until the  
32 sooner of (a) the staff member completes an isolation period  
33 recommended by applicable CDC and ICE guidance or (b) the  
34 staff member meets CDC requirements for no longer being  
35 infectious with COVID-19;  
36  
37 6. Use best efforts to ensure that Adelanto is prohibiting staff  
38 who have active symptoms of COVID-19 from entering  
39 Adelanto.

40 **F. Social Distancing**

- 41 i. Defendants shall comply with all applicable CDC and ICE guidance

1 regarding physical distancing in detention facilities when applicable.

2 **G. Masks**

- 3 i. Defendants shall comply with CDC guidance and the operative ICE  
4 guidance regarding mask use and availability for detainees and  
5 Adelanto staff.

6 **H. Cleaning and Hygiene**

- 7 i. Defendants shall:
- 8 1. Provide all Class Members, detained at Adelanto, with free,  
9 reasonable access to cleaning supplies, including but not  
10 limited to soap, non-alcohol-based hand sanitizer, if available,  
11 and paper towels.
  - 12 2. Ensure that each Class Member, detained at Adelanto, is  
13 provided with an individual supply of soap and paper towels  
14 that they may bring with them to their cells/sleeping area on at  
15 least a weekly basis.
  - 16 3. Use best efforts to ensure that Adelanto refrains from using  
17 HDQ Neutral in all housing units and other indoor spaces at  
18 Adelanto that are occupied or used by detainees.
  - 19 4. Use best efforts to ensure that any cell or sleeping area  
20 occupied by a confirmed or suspected COVID-19 positive  
21 individual prior to housing other Class Members in the cell or  
22 sleeping area is thoroughly cleaned and disinfected.
  - 23 5. Use best efforts to ensure that any cell or sleeping area used  
24 for intake quarantine prior to housing other Class Members in  
25 the cell or sleeping area is thoroughly cleaned and disinfected.

26 **III. TERMS OF RE-DETENTION FOR NON-DETAINED CLASS**  
27 **MEMBERS**

- 28 A. During the term of the Agreement (as set forth in Section VII below), and  
subject to Subsections III.B, III.C, and III.D, ICE will make best efforts to  
not re-detain under the immigration laws any Class Member released  
pursuant to the Population Reduction Order, a bail order in this case, or a  
Temporary Restraining Order issued in this case or in a separately and  
previously filed individual habeas case subsequently stayed pursuant to the  
Court's April 23, 2020 order, ECF No. 52 (without regard to the

1 termination of such bail orders or TROs pursuant to the terms of this  
2 Agreement), unless: (1) ICE, prior to, during, or after re-apprehension of  
3 such Class Member, is or becomes aware of pre- or post-release conduct  
4 indicating that the Class Member is a threat to national security and/or  
5 public safety such that ICE determines that continued detention is  
6 warranted; (2) one or more of the conditions in Subsection III.B is met; or  
7 (3) to execute an administratively final order of removal. This section  
8 shall not apply to Class Members ordered re-detained by the district court  
9 or Class Members who have departed or been removed from the United  
10 States since their release from Adelanto and have subsequently re-entered  
11 the United States.

- 12
- 13 i. Threats to public safety or national security include, but are not  
14 limited to: terrorism-related activities; violations of export laws  
15 relating to infrastructure, intellectual property, or weaponry;  
16 intelligence or counterintelligence; homicide, including attempt;  
17 rape or sexual assault, including attempt; crimes against children,  
18 including offenses involving molestation, abuse, abandonment,  
19 neglect, or harm (physical or emotional); felony domestic violence  
20 offenses, including violations of an underlying protective order;  
21 serious drug offenses, such as trafficking in or sale of significant  
22 amounts; and unlawful use of a weapon in an area where it could  
23 reasonably be anticipated to cause harm to others.
- 24 ii. A determination of whether a Class Member poses a current threat to  
25 public safety based solely upon criminal convictions and/or ongoing  
26 criminal proceedings preceding the Class Member's release pursuant  
27 to the Population Reduction Order, a bail order in this case, or a  
28 Temporary Restraining Order issued in this case or in a separately  
and previously filed individual habeas case subsequently stayed  
pursuant to the Court's April 23, 2020 order, may include  
consideration of factors such as the egregiousness of the underlying  
conviction and/or ongoing criminal proceedings; whether the  
conduct included violence or the use or threatened use of a firearm;  
the sentence served or – in the case of Class Members in ongoing  
criminal proceedings – potential sentence; the recency of the  
criminal activity; the seriousness of any prior criminal record; as  
well as mitigating factors, including length of presence in the United  
States; personal and family circumstances; health and medical  
factors (including mental health factors); evidence of rehabilitation,  
compliance with conditions of release; and availability of  
alternatives to detention to mitigate the risk to public safety and/or  
national security. Crimes that may fall within this category include,

1 but are not limited to: homicide, including attempt; rape or sexual  
2 assault, including attempt; crimes against children, including  
3 offenses involving molestation, abuse, abandonment, neglect, or  
4 harm (physical or emotional); felony domestic violence offenses,  
5 including violations of an underlying protective order; and unlawful  
6 use of a weapon in an area where it could reasonably be anticipated  
7 to cause harm to others. In such limited cases, ICE will conduct an  
8 individualized review of the Class Member's record and may re-  
9 detain the Class Member only after approval at a senior headquarters  
10 level.

11 B. During the term of the Agreement (as set forth in Section VII below), ICE  
12 will re-detain under the immigration laws a Class Member released  
13 pursuant to the Population Reduction Order, a bail order in this case, or a  
14 Temporary Restraining Order issued in this case or in a separately and  
15 previously filed individual habeas case subsequently stayed pursuant to the  
16 Court's April 23, 2020 order, ECF No. 52, if one or more of the following  
17 conditions exists:

- 18 i. The Class Member has violated any material condition of release in  
19 a manner indicating that the Class Member presents a danger to  
20 persons or property, or poses a risk of flight as determined by  
21 ICE/ERO. Risk of flight will be determined based on the individual  
22 factors in a Class Member's case. A material condition of release  
23 includes but is not limited to those conditions prohibiting criminal  
24 activity, reporting requirements, and restrictions on movement.
- 25 1. Reporting within one business day of a scheduled reporting  
26 date will not be considered a violation of a material condition  
27 of release.
  - 28 2. The Class Member may contact ICE at the number provided  
on his or her release requirement documentation to inform  
ICE that the Class Member will be unable to report due to an  
emergency.
  3. If the Class Member is unable to get through or is otherwise  
concerned about reaching the appropriate number, the Class  
Member may contact ICE using the following email address:  
LosAngeles.Outreach@ice.dhs.gov. The subject line email  
should note that the individual is a Roman Class Member,  
provide information as to when and where the check in was to  
take place, state the reason- describing the emergency that  
will prevent the Class Member from making the check in and

1 what efforts were made to contact the local office, and  
2 provide contact information for the Class Member. In the  
3 case that the Class Member has moved out of the Los Angeles  
4 Area of Responsibility, he or she must also contact the ERO  
5 office covering the area they now reside;

6 ii. The Class Member fails or has failed to appear for an immigration  
7 court hearing and was ordered removed by an immigration judge.

8 1. If the immigration judge later grants a motion to reopen the *in*  
9 *absentia* removal order, ERO will pay particular attention to  
10 the circumstances surrounding the *in absentia* order when  
11 considering whether to re-detain the Class Member.

12 iii. Following release, the Class Member has been arrested by local,  
13 state, or federal authorities for new criminal conduct if, based on that  
14 conduct, the Class Member is an enforcement priority under the  
15 Guidelines for the Enforcement of Civil Immigration Law, issued by  
16 Secretary Mayorkas on September 30, 2021, as determined by  
17 ICE/ERO. If the Secretary issues new enforcement guidelines during  
18 the term of this Settlement Agreement, the parties will meet and  
19 confer.

20 iv. A local, state, or federal authority finds that the Class Member has  
21 failed to comply with the terms of probation or parole.

22 C. Re-detention of Class Members permitted under Section III may continue  
23 at ICE's discretion, as permitted by law, and subject to the provisions of  
24 Section IX.

25 D. To the extent that a Class Member re-detained by ICE has ongoing  
26 criminal proceedings, ICE will facilitate the Class Member's access to  
27 criminal counsel, if applicable, and attendance at any criminal  
28 proceedings, but ICE will not delay removal efforts to accommodate  
ongoing criminal proceedings.

E. A Class Member released pursuant to a bail order in this case, or a  
Temporary Restraining Order issued in this case or in a separately and  
previously filed individual habeas case subsequently stayed pursuant to  
the Court's April 23, 2020 order, ECF No. 52, must continue to comply  
with any conditions of release set forth by the District Court, except that  
Class Members are not required to live at the residence approved by the  
Court, provided that they obtain approval from ICE Enforcement and  
Removal Operations for any proposed mailing or physical address change  
in advance of such change.



1 F. ICE will use best efforts to provide notice to class counsel of a Class  
2 Members' re-detention as soon as possible after re-detention. ICE will  
provide notice not later than three business days after re-detention.

3 **IV. INFORMATION DISCLOSURE**

4 A. Defendants shall:

5 i. Report to Plaintiffs within 24 hours of learning of the hospitalization  
6 or death of any Class Member for COVID-19 related reasons.  
7 COVID-related means that at least one of the reasons the Class  
8 Member is hospitalized or has died is due to COVID-19 or  
9 complications stemming from COVID-19. This requirement applies  
10 for class members who are transferred to a hospital and/or released  
11 from custody at Adelanto while COVID-19 positive. Plaintiffs  
12 acknowledge that DHS has no entitlement to or ability to obtain  
13 information regarding the medical status or cause of death of any  
14 individual who has been released from DHS custody and that DHS  
15 would only become aware of medical information or death of a  
released class member if such information is voluntarily shared with  
DHS by the class member; medical personnel, family members, or  
an attorney authorized to release information about the class  
member's condition; or, in case of the death, the executor of the  
class member's estate or similarly authorized party.

16 ii. Report to Plaintiffs on a weekly basis the following information:

- 17 1. Results of COVID-19 testing of Class Members detained at  
18 Adelanto, and staff or confirmation that facility conditions did  
19 not require any tests that week;
- 20 2. Vaccination rates of Class Members detained at Adelanto;
- 21 3. Class Member population per housing unit at Adelanto;
- 22 4. The number of new intakes at Adelanto;
- 23 5. The number of releases from Adelanto.

24 B. All remaining reporting obligations pursuant to court order shall cease,  
25 including the census sheet, bail sheet, and daily report.

26 C. The district court bail process shall be vacated.

27 **V. TERMS OF ORDER FOR NOTICE, HEARING, AND FINAL**  
28 **JUDGMENT**



- 1 A. This Agreement may be executed in two or more counterparts, each of  
2 which shall be deemed an original and all of which together shall be  
3 deemed to be one and the same agreement. A facsimile or other duplicate  
4 of a signature shall have the same effect as a manually executed original.  
5 The Agreement shall be deemed executed on the date the Agreement is  
6 signed by all of the undersigned.
- 7 B. Within one week of the Effective Date, the parties shall file a joint  
8 stipulated notice of voluntary dismissal, with prejudice, pursuant to Fed.  
9 R. Civ. P. 41(a)(1)(A)(ii). The parties' joint stipulation will also jointly  
10 move for termination of the bail orders issued in this case, individual  
11 TROs issued in this case, and TROs issued in separately and previously  
12 filed individual habeas cases subsequently stayed pursuant to the Court's  
13 April 23, 2020 order.
- 14 C. Defendants shall produce a list of all Class Members to Class Counsel  
15 within one week of the Agreement Date. Additional Class Members shall  
16 have the opportunity to self-identify between the Agreement date and the  
17 Effective date. The parties will meet and confer regarding any self-  
18 identified class members to discuss whether they should be added to the  
19 class. Any disagreements regarding class membership will be handled via  
20 the dispute resolution process in section X.
- 21 D. Following the Agreement Date, Plaintiffs shall file forthwith a Motion  
22 seeking Preliminary Approval of the Agreement and entry of a  
23 Preliminary Approval Order, attached as Exhibit 1. The Motion shall seek  
24 approval of a Notice to the Settlement Class substantially in the form  
25 appended hereto as Exhibit 2, as well as a finding that the following  
26 satisfies the publication requirements of Federal Rule of Civil Procedure  
27 23:
- 28 i. Notice to Class Members shall be translated into Spanish,  
Russian, and Mandarin, or into the detainee's native language  
(including orally) insofar as materials in the native language are  
available;
  - ii. Within ten (10) business days of the date of Court's preliminary  
approval, Defendants will post English and Spanish versions of  
the Notice to the Class and this Settlement Agreement in  
appropriate places throughout Adelanto where the Notice will be  
prominently visible to Class Members; (ii) Plaintiffs will send the  
Notice to the Class and this Settlement Agreement via first class  
mail to all Released Class Members at the address on file with  
ICE; (iii) Plaintiffs will post the Notice to the Class and this

1 Settlement Agreement in appropriate places on the website of the  
2 ACLU of Southern California; (iv) Plaintiffs will distribute the  
3 Notice to the Class and this Settlement Agreement to immigration  
4 attorneys and advocates through the American Immigration  
5 Lawyers' Association listserv, and other communication channels  
6 utilized by immigration attorneys and advocates in Southern  
7 California. The Notice to the Class shall remain posted, and shall  
8 be maintained or replaced with new copies as needed, until the  
9 Court issues an order finally approving or rejecting the  
10 Settlement. The Party designated above to provide notice shall  
11 bear the cost of providing that notice.

12 E. A Class Member may object to the proposed Settlement by filing a written  
13 objection with the Court no later than fourteen (14) days before the Final  
14 Approval Hearing.

15 F. The Parties shall request that Class Members be provided at least twenty-  
16 one (21) days to submit objections to the Court after the Notice to the  
17 Class is posted.

18 G. The Parties, either individually or jointly, may, but are not required to  
19 respond in writing to any Objection. Any such written responses shall be  
20 due the same day as the Motion for Final Approval, or as otherwise  
21 ordered by the Court.

22 H. If the Settlement contemplated by this Agreement is preliminarily  
23 approved by the Court, counsel for Plaintiffs shall file a Motion for Final  
24 Approval requesting that the Court enter a Final Approval Order  
25 substantially in the form appended hereto as Exhibit 3.

26 I. Should the Court enter an order preliminarily approving the settlement  
27 that contains substantive provisions different from the Preliminary  
28 Approval Order, attached as Exhibit 1, or an order finally approving the  
settlement that contains substantive provisions different from the Final  
Approval Order, attached as Exhibit 3, the Parties shall meet and confer in  
good faith regarding the differences and shall either accept the Court's  
orders as written or use their best efforts to undertake whatever efforts are  
necessary to obtain Court orders satisfactory to both Parties. The Parties  
agree that alterations to filing deadlines or hearing dates shall not be  
considered modifications of substantive provisions.

J. The Parties will take all necessary and appropriate steps to obtain  
preliminary and final approvals of the Settlement Agreement. If the Court  
gives final approval of this Settlement Agreement, and if there is an

1 appeal from such decision, the Parties will defend the Settlement  
2 Agreement.

3 **VI. EFFECTIVE DATE OF SETTLEMENT**

4 A. The Effective Date shall be the date when all of the following shall have  
5 occurred: (a) entry of the Preliminary Approval Order; (b) approval by the  
6 Court of this Agreement, following notice to the Class and a fairness  
7 hearing, as prescribed by Federal Rule of Civil Procedure 23; and (c)  
8 entry by the Court of the Final Approval Order.

9 B. Except as otherwise provided herein, if the Agreement is terminated or  
10 modified in any material respect or fails to become effective for any  
11 reason, then none of the Agreement's terms shall be effective or  
12 enforceable; the Parties to this Agreement shall be deemed to have  
13 reverted to their respective status in the Action as of the date and time  
14 immediately prior to the Agreement Date; and except as otherwise  
15 expressly provided, the Parties shall proceed in all respects as if this  
16 Agreement and any related orders had not been entered. If the Agreement  
17 is terminated or modified in any material respect, the Parties shall be  
18 deemed not to have waived, not to have modified, or not to be estopped  
19 from asserting any additional defenses or arguments available to them.

20 **VII. TERMINATION OF OBLIGATIONS**

21 The obligations of this Agreement shall terminate one year after the Effective  
22 Date.

23 **VIII. RELEASE OF CLAIMS/NO ADMISSION OF WRONGDOING**

24 A. Upon final approval of this Agreement by the District Court, Plaintiffs and  
25 all Class Members waive and release Defendants from liability for all  
26 claims, demands, rights, liabilities and causes of action for declaratory or  
27 equitable relief, including injunctive relief, known or unknown, that relate  
28 to risks associated with COVID-19 inside Adelanto that existed prior to  
the Agreement Date, and which were or could have been alleged in the  
Action based on the same common nucleus of operative facts alleged.

B. Nothing in this Agreement shall have any preclusive effect on any  
damages claim by Plaintiffs or any Class Members or any claim by  
Plaintiffs or any Class Members concerning any individual challenge to  
the legality of their custody, now or in the future.

C. By agreeing to this Agreement and the release contained herein,  
Defendants do not waive any defenses available to any Defendant or the

1 United States in any other pending or future action to claims that were or  
2 could have been made in the Action that arise from the same common  
nucleus of operative facts alleged by Plaintiffs.

3 D. This Agreement is not and shall not be offered as evidence of, or deemed  
4 evidence of, any admission of liability or fault on the part of Defendants,  
5 regarding any issue of law or fact, or regarding the truth or validity of any  
allegation or claim raised in this action.

6 **IX. DISPUTES REGARDING REDETENTION**

7 A. A claim by Class Counsel that Defendants are in material breach of  
8 Subsections III.A. or III.B must be raised in writing to Counsel for  
9 Defendants within seven-days of a notice of redetention under Subsection  
10 III.E. A material breach is an allegation that ICE has wholly failed to  
11 consider mitigating evidence in ICE's possession at the time of decision  
12 or has considered erroneous or inaccurate information in reaching its  
13 decision that the class member is a threat to national security, and/or  
14 public safety, as described in Section III.A. Class Counsel's disagreement  
15 with ICE/ERO's determination, after ICE has weighed all applicable  
16 factors, that a class member is a threat to public safety and/or threat to  
national security or poses a risk of flight is not grounds for a material  
breach claim. Instances of mistake or good-faith error in which, after  
meet-and-confer, the agency acknowledges the mistake or good-faith error  
and corrects it, are not material breach and may not be further challenged.

17 B. Counsel for Defendants agree to meet and confer with Class Counsel  
18 within five business days in response to a claim under Section IX.A.

19 C. In the event that the Parties agree that a Class Member was re-detained in  
20 violation of this Settlement Agreement, and the exceptions set forth under  
21 Section III.A and III.C otherwise do not apply, ICE will release the Class  
22 Member from custody. In the event that the magistrate judge presiding  
23 over a dispute between the parties finds that an individual Class Member  
24 was re-detained in violation of the Settlement Agreement, and the  
exceptions set forth under Section III.A and III.C otherwise do not apply,  
ICE will release the Class Member from custody.

25 D. Counsel for Defendants agree to meet and confer with Class Counsel  
26 within three business days in response to a claim by Plaintiffs that  
27 Defendants are in material breach of Subsections III.A or III.B of this  
28 agreement (pertaining to re-detention of any individual released Class  
members). If the Parties are unable to resolve the dispute within two  
business days of the date the Parties meet and confer, the Parties agree

1 that they will present the dispute to the assigned magistrate for resolution  
2 as follows:

- 3 i. Counsel for Plaintiffs shall provide Counsel for Defendants with a  
4 brief of not longer than five pages, and any supporting evidence,  
5 within five business days. Counsel for Defendants shall have five  
6 business days to submit a response. Counsel for Plaintiffs shall file  
7 a reply, if any, within two business days. The Parties will then  
8 jointly file a request for expedited resolution with the assigned  
9 magistrate containing Plaintiffs' brief, Defendants' response,  
10 Plaintiffs' reply, and any supporting evidence from either party.  
11
- 12 ii. In deciding whether a violation of Section III of the Settlement  
13 Agreement took place, the individual bears the burden of  
14 demonstrating, by preponderance of the evidence, that he or she  
15 was re-detained in violation of Section III of the Settlement  
16 Agreement.  
17
- 18 iii. The Parties will request that the magistrate judge hold a hearing  
19 concerning the dispute before issuing an order. In determining  
20 whether a breach occurred, the magistrate may determine whether  
21 one or more of the conditions in Subsection III.A or III.B is met  
22 and, where applicable, that ICE/ERO conducted an analysis as to  
23 whether the class member is a threat to national security and/or  
24 public safety, as described in Section III.A. If Class Counsel allege  
25 that information in ICE's possession at the time of decision was not  
26 wholly considered, erroneous, and/or inaccurate and ICE did not  
27 agree to consider the non-considered and/or corrected information  
28 after Plaintiffs raised the allegation in compliance with Section  
IX.A., the magistrate's analysis will include consideration of  
whether ICE has wholly failed to consider mitigating evidence in  
ICE's possession at the time of decision or has considered  
erroneous or inaccurate information in reaching its decision that the  
class member is a threat to national security, and/or public safety,  
whether such evidence was significant enough to potentially alter  
the final decision, and whether ICE took corrective action if  
necessary. The magistrate may not make a de novo determination  
as to whether the class member is an enforcement priority threat to  
national security, public safety, and/or border security as  
determined by ERO under applicable guidance.
- iv. In the event that the magistrate judge presiding over a dispute  
between the Parties finds that an individual Class Member was re-  
detained in violation of the Settlement Agreement, the magistrate

1 judge's order concerning the dispute shall be binding on the Parties  
2 and ICE will release the individual from custody, subject to appeal,  
3 insofar as the exceptions set forth under Section III.A and III.C do  
4 not apply.

5 **X. ENFORCEMENT**

6 A. The District Court shall have continuing jurisdiction to enforce the  
7 Settlement Agreement's terms, subject to the limitations in Section IX, and  
8 this Section X of the Settlement Agreement. The Court shall have  
9 jurisdiction to enforce material breaches of Sections II and IX of this  
10 Settlement Agreement against ICE only on behalf of an individual Class  
11 Member, subject to appeal. Nothing in this Agreement shall be construed  
12 as granting the Court authority to enjoin or restrain the operation of the  
13 provisions of Chapter 4 of Part II of the Immigration and Nationality Act,  
14 other than with respect to the application of such provisions to an  
15 individual class member. Nothing in this Agreement shall be construed as  
16 a waiver by the federal government of any rights to assert the limitations  
17 on judicial relief set forth in 8 U.S.C. § 1252(f).

18 B. Dispute Resolution. Individual class members, via class counsel, and  
19 Defendants, will endeavor, in good faith, to resolve informally any  
20 differences regarding interpretation and compliance. If informal resolution  
21 fails, and the parties seek the Court's enforcement, the Court may order  
22 mediation or impose any remedy authorized by law or equity, subject to  
23 the limitations set forth in this Section X of the Settlement Agreement. If  
24 any of the Parties believe that another Party is not in substantial  
25 compliance, that is, is in substantial non-compliance, with any provision of  
26 this Settlement Agreement—excluding those in Section IX concerning re-  
27 detention of released Class Members—that Party shall, through its counsel,  
28 provide the allegedly non-compliant Party, in writing, notice of the specific  
reasons why it believes that they are not in substantial compliance with  
such provision or provisions, referencing the specific provision or  
provisions. Once notified, the Party so notified shall provide a written  
response to any claim of alleged substantial non-compliance within three  
business days.

29 C. Limitation on Court Orders. The Court shall retain jurisdiction to enter  
orders only after compliance with the dispute resolution procedures set  
forth in the preceding paragraph. The Court shall not have jurisdiction to  
enter an order regarding compliance with Sections II and IX of the  
Settlement Agreement that applies to more than one individual Class  
Member. The Court shall not have jurisdiction to enter orders enforcing



1 the Settlement Agreement that would violate 8 U.S.C. § 1252(f)(1).

2 D. If a Party fails to adhere to any determination by the magistrate judge  
3 under Section IX, the aggrieved Party may file a motion for contempt or  
4 other sanctions with the District Court judge presiding over the case.

5 **XI. MISCELLANEOUS PROVISIONS**

6 A. Admission of Liability. This Agreement is not, is no way intended to be,  
7 and should not be construed as, an admission of liability on the part of any  
8 of the Parties. This settlement is entered into by the Parties for the purpose  
9 of compromising on disputed claims and avoiding the expenses and risks  
10 of further litigation, and for no other purpose.

11 B. Attorneys' Fees and Costs. ICE shall pay Plaintiffs the amount of  
12 \$2,002,289 in attorney's fees. Plaintiffs also attest that they have incurred  
13 up to \$197,711 in costs taxable under 28 U.S.C. § 1920. Defendants shall  
14 submit Plaintiffs' claim for up to \$197,711 in taxable costs to the  
15 Department of the Treasury for payment from the Judgment Fund, subject  
16 to approval by the Department of the Treasury. Plaintiffs will provide any  
17 documents or information requested by the Department of the Treasury to  
18 support their claim for taxable costs. Plaintiffs agree to accept Defendants'  
19 payment of \$2,200,000 as full and complete satisfaction of Plaintiffs'  
20 claims for attorneys' fees, costs, and litigation expenses, inclusive of any  
21 interest. Within five business days of the Effective Date, Class Counsel  
22 will provide Defendants' Counsel with the necessary information for the  
23 transfer of these funds.

- 24 1. Plaintiffs represent that they have no existing debts to the  
25 United States and that they are not subject to an offset under  
26 *Astrue v. Ratliff*, 560 U.S. 586 (2010).
- 27 2. Plaintiffs represent that their claims for attorney's fees,  
28 litigation costs, and other expenses have been assigned to their  
counsel, and ICE accepts the assignment and waives any  
applicable provisions of the Anti-Assignment Act, 31 U.S.C.  
§ 3727.
3. Subject to the foregoing provision, Federal Defendants shall  
deliver the Attorneys' Fee Settlement Amount to Plaintiffs'  
Counsel by electronic funds transfer into Plaintiffs' Counsel's  
designated account. Plaintiffs and their Counsel acknowledge  
that payment of the Attorneys' Fee Settlement Amount by  
Federal Defendants in accordance with the wire instructions



1 shall resolve both Defendants' entire liability risk for such  
2 amount.

3 4. This Settlement Agreement does not waive Plaintiffs' or their  
4 attorneys' tax liability or any other liability owed to the  
5 United States government.

6 5. Plaintiffs' Counsel is responsible fully for the allocation of  
7 and payment of the Attorneys' Fee Settlement Amount among  
8 themselves.

9 C. Entire Agreement. This Agreement and the Vargas Settlement Agreement  
10 contain the entire agreement between the Parties and constitute the  
11 complete, final, and exclusive embodiment of their agreement with respect  
12 to the Action. This Agreement is executed without reliance on any  
13 promise, representation, or warranty by any Party or any Party's  
14 representative other than those expressly set forth in this Agreement and  
15 the Vargas Settlement Agreement.

16 D. Modifications and Amendments. No amendment, change, or modification  
17 to this Agreement shall be valid unless in writing signed by the Parties or  
18 their counsel.

19 E. Governing Law. This Agreement is governed by federal law and must be  
20 interpreted under federal law and without regard to conflict of laws  
21 principles.

22 F. Further Assurances. The Parties shall execute and deliver any additional  
23 papers, documents, and other assurances, and must do any other acts  
24 reasonably necessary, to perform their obligations under this Agreement  
25 and to carry out this Agreement's expressed intent.  
26  
27  
28

Dated: December 23, 2024

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