

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAISA YAKUBOVA, EMMA UNGURYAN,
BELLA VESNOVSKAYA, DAVID VESNOVSKIY,
VYACHESLAV VOLOSIKOV, ALEKSANDER
GOLDBERG, MUHAMMAD SHEBBIR SAJID,
and EFIM KATS on behalf of themselves and all other
similarly situated individuals,

Plaintiffs,

06 CV 3203 (ERK)(RLM)
(ECF CASE)

-against-

MICHAEL CHERTOFF, in his official capacity as
Secretary of the Department of Homeland Security,
JONATHAN SCHARFEN,¹ in his official capacity as
Acting Director of the United States Citizenship and
Immigration Services, ANDREA QUARANTILLO,
in her official capacity as District Director of the
New York City District of the United States
Citizenship and Immigration Services,
MICHAEL MUKASEY, in his official capacity as
Attorney General of the United States, and
ROBERT S. MUELLER, in his official capacity as
Director of the Federal Bureau of Investigation,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ JUL 7 2008 ★
BROOKLYN OFFICE

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STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE

Named Plaintiffs in the above-captioned matter and Defendants Michael Chertoff, Secretary of
Homeland Security; Michael B. Mukasey, Attorney General; Jonathan Scharfen, Acting Director of the United
States Citizenship and Immigration Services ("USCIS"); Robert S. Mueller, III, Director of the Federal Bureau
of Investigation ("FBI"); and Andrea Quarantillo, District Director, USCIS New York District (together,

¹ The complaint names Alberto Gonzales ("Gonzales"), then-Attorney General of the United States, as a defendant in his official capacity. Gonzales has been succeeded in office by Michael Mukasey, who became Attorney General on November 9, 2007. The complaint names Mary Ann Gantner ("Gantner"), then-District Director of the New York City District of USCIS, as a defendant in her official capacity. Gantner has been succeeded in office by Andrea Quarantillo, who became District Director of the New York City District of USCIS on November 6, 2006. The complaint names Emilio Gonzalez ("Gonzalez"), then-Director of USCIS, as a defendant in his official capacity. Gonzalez has been succeeded in office by Jonathan Scharfen ("Scharfen"), who became Acting Director of USCIS on April 21, 2008. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mukasey, Quarantillo and Scharfen have been automatically substituted for Gonzales, Gantner and Gonzalez as defendants.

“Defendants”), by and through their attorneys, hereby enter into this Stipulation and Agreement of Settlement and Release (the “Stipulation”), as of the date beneath Defendants’ Counsel’s signature.

WHEREAS:

A. Plaintiffs filed suit on behalf of themselves and all others similarly situated against Defendants in the United States District Court for the Eastern District of New York on June 28, 2006, seeking class certification, designation of Class Counsel and declaratory and injunctive relief.

B. By Order of November 2, 2006, the Court denied Defendants’ Motion to Dismiss.

C. To date, the Court has not granted class certification, designation of Class Counsel, or declaratory or injunctive relief.

D. Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the Complaint and Amended Complaint, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to the Named Plaintiffs, the putative Class, or the putative Class Members, but agree to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and terminate the Action and any and all Settled Claims as defined in paragraph 9.

E. Plaintiffs’ Counsel have conducted discussions and arm’s length negotiations with Defendants’ Counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Named Plaintiffs, the putative Class, and all putative Class Members.

F. After considering the benefits that the Plaintiffs, the putative Class, and the putative Class Members will receive from settlement of the Action and the risks of litigation, Plaintiffs’ Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and in the best interests of the Plaintiffs, the putative Class, and the putative Class Members; have agreed that the Released Parties should be

released from the Settled Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the dismissal with prejudice of all Settled Claims as defined in paragraph 9.

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, in consideration of the benefits flowing to the parties hereto from the Settlement, that the Settled Claims of Plaintiffs as against the Released Parties shall be compromised, settled, forever released, barred, and dismissed with prejudice, upon and subject to the following terms and conditions:

I. DEFINITIONS

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

1. "Action" means the above-captioned action pending in the United States District Court for the Eastern District of New York (Docket No. 06 cv 3203).

2. "Defendants" means Michael Chertoff, in his official capacity as Secretary of the Department of Homeland Security; Jonathan Scharfen, in his official capacity as Acting Director of USCIS; Andrea Quarantillo, in her official capacity as District Director of the New York City District of USCIS; Michael Mukasey, in his official capacity as Attorney General of the United States, and Robert S. Mueller, in his official capacity as Director of the Federal Bureau of Investigation.

3. "USCIS Defendants" or "USCIS" means Michael Chertoff, in his official capacity as Secretary of the Department of Homeland Security; Jonathan Scharfen, in his official capacity as Acting Director of USCIS; and Andrea Quarantillo, in her official capacity as District Director of the New York City District of USCIS.

4. "Yakubova applicants" means, for purposes of this settlement only, all individuals residing within the jurisdiction of the United States District Court for the Eastern District of New York, whose naturalization applications had been pending for more than 120 days without adjudication after the applicants' initial interviews by USCIS, as of June 12, 2008. Defendants have represented that as of June 12, 2008, there were a total of 1,426 Yakubova applicants. Not included within this group are 225 individuals who would

otherwise fit within the Yakubova applicants definition but whose naturalization applications, according to Defendants' representations, remain pending without adjudication due to active investigations related to national security, public safety or fraud that may preclude a grant of naturalization.

5. "Effective Date of Settlement" or "Effective Date" means the date upon which the Settlement provided for in this Stipulation shall become effective, as set forth in paragraph 21 below.

6. "Plaintiff(s)" or "Named Plaintiff(s)" means Raisa Yakubova, Emma Unguryan, Bella Vesnovskaya, David Vesnovskiy, Vyacheslav Volosikov, Aleksander Goldberg, Muhammad Shebbir Sajid, and Efim Kats.

7. "Plaintiffs' Counsel" means the New York Legal Assistance Group. Should this entity change its name or merge with other entities, those new entities shall also qualify as Plaintiffs' Counsel.

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

9. "Settled Claims" means any and all claims, in law or equity, that were asserted or that could have been asserted by Plaintiffs in the within action, based upon the facts alleged or that could have been alleged in the Amended Complaint relating to the subject of this action.

10. "Settlement" means the settlement provided for in this Stipulation.

II. RELIEF AND REPORTING

11. On or before August 25, 2008, Defendants shall take all necessary steps to adjudicate, and USCIS Defendants shall adjudicate, at least 90 percent of the naturalization applications submitted by Yakubova applicants which, as of August 25, 2008, are able to be adjudicated ("adjudicable Yakubova applicants"). Cases not able to be adjudicated as of August 25, 2008 because of the Yakubova applicant's failure to provide information requested by USCIS Defendants or failure to take some other action required by USCIS Defendants, or because Defendants are awaiting receipt of information from the Yakubova applicant, shall be excluded from the computation of the percentage. USCIS shall schedule those Yakubova applicants whose naturalization applications are approved for an oath of citizenship to take place within 45 days of the

approval of the Yakubova applicant's application, barring unforeseen circumstances or any action taken by the applicant which precludes such scheduling.

12. On or about July 29, 2008 (reporting from July 26, 2008), USCIS Defendants will provide Plaintiffs' Counsel with the following reports:

a. The number of Yakubova applicants whose naturalization applications are pending receipt of the result of their FBI name check; and

b. The number of Yakubova applicants whose naturalization applications remain unadjudicated and/or are pending Oath Ceremonies.

13. On or before September 2, 2008 (reporting information as of August 25, 2008), USCIS Defendants will provide Plaintiffs' Counsel with the following information:

a. The number of Yakubova applicants whose naturalization applications are pending receipt of the result of their FBI name check;

b. The number of Yakubova applicants whose naturalization applications are pending due to active investigations related to national security, public safety, or fraud that may preclude a grant of naturalization;

c. The number of Yakubova applicants whose naturalization applications, as of that date, are not adjudicable because of the Yakubova applicant's failure to provide information requested by USCIS Defendants or take some other action required by USCIS Defendants, or because Defendants are awaiting receipt of information from the Yakubova applicant;

d. The number of Yakubova applicants whose naturalization applications have not been adjudicated for reasons other than those listed in paragraphs 13.a, 13.b, and 13.c; and

e. The number of Yakubova applicants whose naturalization applications have been approved but have not yet participated in an Oath Ceremony, and the dates those Yakubova applicants are scheduled to attend their Oath Ceremonies.

14. If the report provided on September 2, 2008 indicates that USCIS has adjudicated the naturalization applications of at least 90 percent of the adjudicable Yakubova applicants:

a. USCIS will provide an individual notice ("the notice"), the content of which is to be agreed upon by counsel for all parties on or before August 7, 2008, to all Yakubova applicants whose naturalization applications have not been adjudicated as of August 25, 2008. The notice shall advise the remaining Yakubova applicants of, *inter alia*, their right to challenge the delay in the adjudication of their naturalization applications. USCIS shall mail the notices no later than September 8, 2008.

b. Once USCIS mails the notices, Defendants' Counsel shall inform Plaintiffs' Counsel that the notices have been mailed, and the Court's jurisdiction over the enforcement of the Stipulation shall end, except that the Court shall retain jurisdiction over the enforcement of the obligations set forth in paragraph 23 of this Stipulation.

15. If the report provided on September 2, 2008 indicates that USCIS Defendants have adjudicated the naturalization applications of fewer than 90 percent of the adjudicable Yakubova applicants:

a. Plaintiffs' Counsel and Defendants' Counsel will meet and confer on September 5, 2008 to attempt to resolve any outstanding disputes.

b. Plaintiffs' counsel will inform Defendants' Counsel on or before September 12, 2008 whether they will seek relief from the Court.

c. The Court shall hear, mediate, and, to the fullest extent possible, obtain the agreement of both parties to resolve the dispute.

d. If Plaintiffs seek relief pursuant to this paragraph, the only issues to be determined by the Court will be 1) whether Defendants' failure to take all necessary steps to adjudicate and/or USCIS Defendants' failure to adjudicate at least 90 percent of the adjudicable Yakubova applicants' naturalization applications was reasonable, and 2) if the Court determines that Defendants' failure to take all necessary steps to adjudicate and/or USCIS Defendants' failure to adjudicate at least 90 percent of the adjudicable Yakubova applicants' naturalization applications was not reasonable, what relief should be ordered. Plaintiffs agree that

they shall not seek contempt or sanctions to enforce this Stipulation. The Court's jurisdiction over the enforcement of this Stipulation shall terminate upon Defendants' compliance with any Order issued to enforce paragraph 11 of this Stipulation, but not before Defendants' compliance with the obligations set forth in paragraph 23 of this Stipulation.

e. If Plaintiffs do not seek relief from the Court pursuant to this paragraph, Defendants shall, on or before September 19, 2008, provide the notice described in paragraph 14.a to all Yakubova applicants whose naturalization applications are not adjudicated as of August 25, 2008. Once USCIS mails the notices, Defendants' Counsel shall inform Plaintiffs' Counsel that the notices have been mailed, and the Court's jurisdiction over the enforcement of this Stipulation shall end, except that the Court shall retain jurisdiction over the enforcement of the obligations set forth in paragraph 23 of this Stipulation.

III. RELEASE; SCOPE AND EFFECT OF RELEASE

16. Plaintiffs withdraw their motion for certification of the class in this action.

17. On the Effective Date, this case will be dismissed with prejudice, and the Named Plaintiffs, on behalf of themselves, their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners ("Releasing Parties"), shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Parties of and from any and all of the Settled Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Released Parties.

18. Plaintiffs' Counsel shall amend the definition of the putative class in Milanes et al. v. Chertoff et al., 08 CV 2354 (S.D.N.Y.), to exclude the following individuals from the Milanes putative class:

All individuals residing within the jurisdiction of the United States District Court for the Eastern District of New York, whose naturalization applications, as of June 12, 2008, had been pending for more than 120 days without adjudication after the applicants' initial interviews by USCIS, except the 225 individuals whose naturalization applications, as of June 12, 2008, remained pending without adjudication due to active investigations related to national security, public safety or fraud that may preclude a grant of naturalization.

Should Plaintiffs' Counsel fail to request amendment of the putative class definition from the Court in Milanes by July 10, 2008, or within one business day of the Effective Date of this Stipulation, whichever comes

later, or should the Milanes Court certify a class without the above exclusion during the pendency of any actions pursuant to this Stipulation, this agreement will be void.

IV. CONTINUING JURISDICTION

19. The parties agree that this Court will retain continuing jurisdiction for the duration of the Stipulation to supervise the implementation of this Stipulation and to enforce its terms. The Court's jurisdiction shall terminate pursuant to the provisions of paragraph 14.b, paragraph 15.d, or paragraph 15.e.

V. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

20. Upon all parties' execution of the Stipulation, the parties shall jointly present the Stipulation to the Court for approval.

21. The Effective Date of this Stipulation shall be the date on which the parties are informed that the Court has so-ordered this Stipulation and granted voluntary dismissal of all claims.

VI. NO ADMISSION OF WRONGDOING

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

a. shall not be construed to waive, reduce or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Yakubova applicants, consistent with the Constitution, laws of the United States, and applicable regulations;

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

c. shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or

administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, the parties may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

VII. ATTORNEYS' FEES

23. Within 120 days of the Effective date, Defendants will deliver to Plaintiffs' Counsel the sum of \$90,000, in settlement of all claims for attorneys' fees and costs that could have been or will be claimed in this litigation.

VIII. ADDITIONAL PROVISIONS

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

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

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

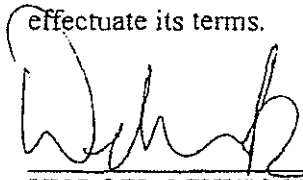
27. This Stipulation constitutes the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto other than those contained and memorialized in such documents.

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

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


30. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized by the parties that this Stipulation is the result of arm's length negotiations between the parties and that all parties have contributed substantially and materially to the preparation of this Stipulation.

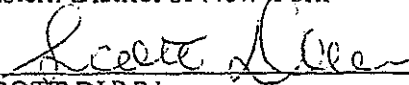
31. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant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


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Dated: 7/1/08


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Dated: 3 July 2008

SO ORDERED: s/Edward R. Korman
Hon. Edward R. Korman
United States District Judge
Eastern District of New York

Dated: 7/8/08