

FILED ENTERED  
LODGED RECEIVED

JUN 29 2000

Judge Zilly

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Zenebe GETE, Olga Froelich, Dallas Julien, Vinay Gounder, Bimal Chand, Dale Racine, Balvinder Maan, Ravinder Maan, and John Lackner, on behalf of themselves individuals and on behalf of others similarly situated,

Plaintiffs.

vs.

IMMIGRATION AND NATURALIZATION SERVICE, Regional Commissioner, and the United States of America,

Defendants.

No. C 94-881Z

JOINT STIPULATION  
REGARDING SETTLEMENT AND  
REQUEST TO REMOVE CASE  
FROM LITIGATION CALENDAR

Plaintiffs and Defendants, by and through their undersigned counsel, hereby agree and stipulate as follows:

The parties jointly request that this case be removed from the litigation calendar in light of the parties' agreement on the following settlement:

- I. Mitigation Guidance. The Immigration and Naturalization Service (INS) will adopt by October 31, 2000, Mitigation Guidance to assist ruling officials in assessing administrative penalties pursuant to 28 C.F.R. Part 9. This Guidance will be disseminated for inclusion in INS's Conveyance Seizures Manual. The purpose of the Guidance is to help ensure that

over, 752, DLW

the penalties assessed under 28 C.F.R. Part 9 are uniform and not excessive. In order to ensure that mitigation penalties are uniform and not excessive, the INS will adopt the following procedures:

- (A) The Mitigation Guidance will describe mitigating and aggravating factors to be considered by an INS officer in deciding whether to assess a penalty under 28 C.F.R. Part 9 and, if so, how much to assess.
- (B) If a person files a petition for relief from forfeiture (which may be a petition for remission, mitigation, or both) and if the conveyance is not returned or is returned with a penalty, then the ruling official must provide to the petitioner a written decision summarizing the evidence relied upon and stating the reason for the decision in terms of the applicable mitigating and aggravating factors. It is not sufficient to justify the decision by mere reference to the "interest of justice" or to the "deterrent effect of the penalty."
- (C) Training materials will be developed regarding the new Mitigation Guidance, and INS officers who adjudicate petitions filed under 28 C.F.R. Part 9 will receive training. The training materials will include specific examples of less serious and more serious offenses, the methodology for arriving at appropriate penalties, and hypotheticals with recommended penalty parameters. INS officers who adjudicate petitions in the Western Region will be informed of the average mitigation penalties being assessed nationwide.
- (D) The INS's Western Regional Office of Asset Forfeiture will regularly monitor the decisions made by the Western Regional offices that seize vehicles. Penalty

amounts will be reviewed for reasonableness and similarity throughout the region.

Any offices that are outside the norm will be required to justify the decisions or adjust future determinations.

II. Probable Cause. Training for INS seizing officers will reemphasize the "probable cause" standard required for the seizure of conveyances based on materials used at the Federal Law Enforcement Training Center. The training will emphasize that a seizing officer must have probable cause to believe that the violator acted with knowledge or in reckless disregard with respect to the elements necessary for a violation of 8 U.S.C. § 1324. The INS agrees that the seizing officer must have probable cause to believe that the alleged violator knew of or recklessly disregarded the passenger's inadmissibility or illegal status where that is an element of the violation. For example, where the basis for the seizure was the alien's inadmissibility due to a criminal conviction, the INS training will highlight the requirement that a valid seizure requires probable cause to believe that the alleged violator knew or recklessly disregarded that the criminal conviction makes the passenger inadmissible to the United States. The alleged violator's knowledge of the passenger's prior conviction is not in itself adequate to establish probable cause. Similarly, where the basis for the seizure was the passenger's false statement or use of fraudulent documents, the INS training will highlight the requirement that a valid seizure requires probable cause to believe that the alleged violator knew that or recklessly disregarded whether the passenger would make a false statement or use a fraudulent document. The mere fact that the passenger made a false statement or used a fraudulent document is not in itself adequate to establish probable cause. Further, the INS agrees that the guidance provided

above will be included in its Conveyance Seizures Manual by December 31, 2000.

III. Notice of Seizure and Provision of Adverse Evidence. The following measures will be adopted in the Western Region:

- (A) Upon seizure of a conveyance, the INS shall provide notice to the owner of the conveyance that includes (i) a statement of the specific provision(s) of law allegedly violated and (ii) a description of the specific acts or omissions forming the basis of the alleged violation(s), including any facts of probable cause to believe that the alleged violator knew or acted in reckless disregard of such violation(s).
- (B) At least 10 days prior to any personal interview or upon timely request, the INS shall provide to a person whose vehicle has been seized copies of the adverse evidence that the INS may rely on during the forfeiture proceedings, or a detailed summary of that evidence. In addition, the INS shall provide a copy of the Mitigation Guidance at the same time it provides a summary or copy of the adverse evidence.
- (C) In making a decision after a personal interview or on a petition for mitigation and/or remission of forfeiture, the INS shall render its decision in writing and shall summarize the evidence relied upon and state the reasons for its decision.
- (D) This agreement shall not be construed as creating any right to a personal interview apart from 8 C.F.R. § 274.5 or any other provision.
- (E) The INS will continue including in its Western Region notice letter the information listed in paragraphs (A), (B) and (C) above. The parties recognize, however, that

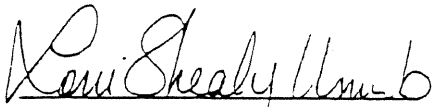
Congress recently passed the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") and that the Department of Justice is presently working on consolidated asset forfeiture regulations to effectuate changes made by CAFRA. In light of the foregoing, the parties agree that the INS retains its ability to conform to the Department of Justice's systemwide implementation of CAFRA, which will govern all Department of Justice seizing agencies (e.g., INS, DEA, and FBI).

IV. Reconsideration of Class Members' Petitions. The INS will allow class members who petitioned for relief from forfeiture or who had a personal interview that is adequately documented in an existing forfeiture file to submit a petition for reconsideration of the denial of relief from forfeiture. The INS will address the petition for reconsideration only in cases where the original forfeiture file still exists, unless the applicant can establish the relevant facts and circumstances to support his or her petition to the satisfaction of the INS adjudicator. In the reconsideration process, petitioners will receive: (1) notification of the right to obtain adverse evidence as described in III.B; (2) re-evaluation of their petitions under the mitigating and aggravating factors in the Mitigation Guidance; and (3) a written decision summarizing the evidence relied upon and stating the reason for the decision in terms of the applicable mitigating and aggravating factors. If a ruling official determines that a lesser penalty is appropriate, then the difference will be refunded to the class member.

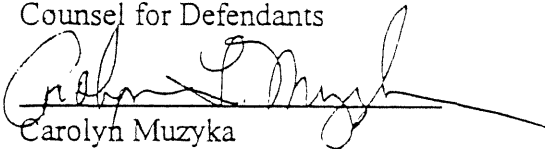
The INS will undertake to notify potential members of the class by advertising the existence of the lawsuit and the terms and conditions of the settlement. Such notice shall be (1) in a newspaper with national circulation, such as USA Today, once each week for a

period of three successive weeks; and (2) prominently displayed on the INS website on the worldwide web. The INS shall also issue such notice and a press release (in English and Spanish) to ethnic newspapers and volunteer agencies as specified on an INS mailing list, if available. The notice shall, among other things, advise potential class members that they have 60 days, following the date of the last advertisement, within which to advise the INS that they wish to pursue reconsideration.

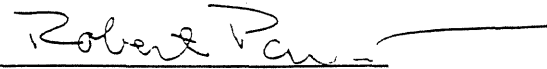
- V. A condition of the settlement agreement is that attorneys' fees will be resolved by agreement by July 31, 2000.
- VI. This agreement is conditioned upon approval by Michael Perez, Director of Asset Forfeiture Management Staff, and David Ogden, Acting Assistant Attorney General, United States Department of Justice, by July 31, 2000.
- VII. This agreement is subject to approval by the United States District Court pursuant to Federal Rule of Civil Procedure 23.



Lorri Shealy Unruh  
U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044  
202-616-9349  
Counsel for Defendants



Carolyn Muzyka  
Assistant Regional Director  
Western Regional Office  
Immigration and Naturalization Service



Robert Pauw  
Gibbs Houston Pauw  
1111 Third Avenue, Suite 1210  
Seattle WA 98101  
206-682-1080  
Counsel for Plaintiffs